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Biennial Report
of the
ATTORNEY GENERAL
of the
STATE OF COLORADO



Years 1935-1936

BYRON G. ROGERS
Attorney General

THE BRADFORD-ROBINSON Ptg. Co.
DENVER, COLORADO
1936

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ATTORNEYS GENERAL OF COLORADO

From the Organization of the State

A. J. Sampson.....	1877-1878
Charles W. Wright.....	1879-1880
Charles H. Toll.....	1881-1882
David F. Urmey.....	1883-1884
Theodore H. Thomas.....	1885-1886
Alvin Marsh.....	1887-1888
Samuel W. Jones.....	1889-1890
Joseph H. Maupin.....	1891-1892
Eugene Engley.....	1893-1894
Byron L. Carr.....	1895-1898
David M. Campbell.....	1899-1900
Charles C. Post.....	1901-1902
Nathan C. Miller.....	1903-1906
William H. Dickson.....	1907-1908
John T. Barnett.....	1909-1910
Benjamin Griffith.....	1911-1912
Fred Farrar.....	1913-1916
Leslie E. Hubbard.....	1917-1918
Victor E. Keyes.....	1919-1922
Russell W. Fleming.....	1923
Wayne C. Williams.....	1924
William L. Boatright.....	1925-1928
Robert E. Winbourn.....	1929-1930
John S. Underwood.....	1930
Clarence L. Ireland.....	1931-1932
Paul P. Prosser.....	1933-1936
Byron G. Rogers.....	1936

STATE OF COLORADO—DEPARTMENT OF LAW

1. DIVISION OF LEGAL AFFAIRS

¹BYRON G. ROGERS, Attorney General

²PAUL P. PROSSER, Attorney General

NORRIS C. BAKKE, Deputy Attorney General

³CHARLES ROACH, First Assistant Attorney General

⁴CECIL E. SYDNER, First Assistant Attorney General

Assistant Attorneys General

SHRADER P. HOWELL

⁶M. S. GINSBERG

HAZEL M. COSTELLO

PIERPONT FULLER, JR.

RICHARD E. CONOUR

J. GLENN DONALDSON

OLIVER DEAN

WALTER F. SCHERER

⁵LOUIS F. SCHIFF

⁷J. REID WILLIAMS

BENJAMIN H. TALLMADGE

Stenographic and Clerical Assistants

⁸MARGARET M. FALLON

ANN LANDY

ELIZABETH D. PATTEN

⁹WILMA F. CROSKEY

2. INHERITANCE TAX COMMISSION

GEORGE HETHERINGTON, Inheritance Tax Commissioner and
Assistant Attorney General

ARTHUR M. MORRIS

O. S. BRINKER

Deputy Inheritance Tax Commissioners

G. W. MOSCRIPT

¹⁰J. W. KLEIN

Stenographic and Clerical Assistants

MARGARET M. KRANICH

MARIE A. POWELL

¹¹AIMEE MEREDITH

¹²VERA DeCOU

¹Appointed July 3, 1936.

²Deceased June 26, 1936.

³Deceased August 3, 1936.

⁴Appointed September 15, 1936.

⁵Appointed November 22, 1935.

⁶Resigned November 22, 1935.

⁷Appointed June 1, 1936.

⁸Resigned October 1, 1936.

⁹Appointed October 1, 1936.

¹⁰Appointed November 30, 1935.

¹¹Resigned September 1, 1934.

¹²Appointed September 1, 1934.

3. DIVISION OF SECURITIES

BYRON G. ROGERS, Ex-Officio Commissioner of Securities

¹³A. J. F. SCHEPP, Assistant Commissioner of Securities

¹⁴RHODA SON, Secretary

4. LEGISLATIVE REFERENCE OFFICE

CHARLES H. QUEARY, Director

CLAIR T. SIPPEL, Secretary.

5. PUBLIC UTILITIES COMMISSION

Commissioners

EDWARD E. WHEELER, Chairman

¹⁵MALCOM ERICKSON

¹⁷WILLIAM C. DANKS

¹⁶WORTH ALLEN

¹⁸DAN S. JONES

6. DIVISION OF COMMERCE

(a) State Bank Commission

GRANT McFERNON, Commissioner

(b) State Insurance Department

JACKSON COCHRANE, Commissioner

(c) Building and Loan Commission

¹⁹JAMES R. McCLELLAND, Commissioner

²⁰O. A. JOHNSON, Commissioner

¹³Appointed March 1, 1934.

¹⁴Appointed March 1, 1934.

¹⁵Appointed February 1, 1935.

¹⁶Resigned June 1, 1935.

¹⁷Appointed June 1, 1935.

¹⁸Term expired February 1, 1935.

¹⁹Resigned December 1, 1935.

²⁰Appointed December 10, 1935.

IN MEMORIAM

Born in Fayette, Missouri, on November 7, 1880. Died at Fitzsimons General Hospital, Denver, Colorado, June 26, 1936.

Paul Prosser began the practice of law at Fayette, Missouri, and served two terms as prosecuting attorney in Howard County in that state. During the World War he served as a member of the Department of the Judge Advocate General where he reached the rank of major.

At the close of the War he came to Denver where he rapidly made a prominent place for himself in the civic, political and social life of the city.

He was elected Attorney General in 1932 and was re-elected in 1934. During this period the Attorney General was confronted with many emergent problems both novel and difficult but he was at all times equal to the occasion, both as the head of the legal department of the state and as a member of the Executive Council.

No one who ever served the state held a higher standard of public service. It could be said of him, he spoke no ill even of those who might have been his enemies.

He took great personal pride in the conduct of the affairs of the office and his record is outstanding in the history of the office.

Truly, Colorado has lost an outstanding public servant.

IN MEMORIAM

Upon August 3, 1936, Charles Roach, First Assistant Attorney General, departed this life and Colorado mourned the loss of a valued and honored public servant.

A brilliant constitutional lawyer, he had been for years referred to as the "mainstay of the Attorney General's Office." He was appointed first by Attorney General Leslie E. Hubbard in 1917 and thereafter served in the Attorney General's office almost continuously until his untimely death, having been appointed successively by the Attorneys General who followed, regardless of their party affiliations.

Lawyers and laymen throughout the state felt his passing as a personal and irreparable loss.



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BIENNIAL REPORT
OF
ATTORNEY GENERAL
OF THE
STATE OF COLORADO

SCHEDULE I

To His Excellency,
TELLER AMMONS,
Governor of Colorado.

Sir :

Complying with my official duty, I hereby respectfully submit a report of the office of Attorney General for the biennial period from January 7, 1935, to January 12, 1937. This Biennial Report is concerned with the work and progress of the Department of Law under the late Paul P. Prosser whose brilliant career was cut short by his untimely death June 26, 1936, as well as with the administration of the Department since that time by the present incumbent. During this period Mr. Prosser was rendered invaluable assistance by his deputy, Hon. Norris C. Bakke, who, at the election held November 3, 1936, was called by the people to sit upon the supreme bench.

The volume of business in this office has materially increased during the last biennium. The newly created State Department of Public Welfare charged with the administration of Old Age Assistance, Aid to the Blind, Aid to Dependent Children and other forms of Social Security has during the past year taken the full time of one member of the staff.

The Store License Tax has given rise to many difficult problems and considerable litigation. Mr. Ben H. Tallmadge, who was recently appointed as a special assistant to handle these matters, is rapidly disposing of the various cases in a highly efficient manner, having collected large amounts of taxes long overdue.

INTERSTATE CRIME COMPACTS

When the late Paul P. Prosser, as Attorney General, attended the nation-wide crime conference in Washington, held the first week

in December, 1934, at the call of Attorney General, the Honorable Homer S. Cummings, he caught a vision of the possibilities of battling criminals through compacts between the various states.

Upon his return to Colorado he prepared a bill which was passed by the 30th General Assembly (Chapter 141, S. L. 1935) which enabled the Attorney General to negotiate and enter into compacts under the general power granted by Congress, with the other states. Several of the states surrounding Colorado passed similar enabling acts.

Pursuant to this authority our office extended invitations to the commissioners of Kansas, New Mexico and Wyoming to meet in Denver on the 6th day of July, 1936, to negotiate a compact. All of the commissioners accepted and as a result of this meeting a compact dealing with the general crime situation was approved and adopted.

The compact provides for: 1. Arrest of persons who have committed a felony or who are fugitives from justice. 2. The attendance of out-of-state witnesses. 3. The supervision of out-of-state probationers or parolees, and 4, Methods of making the compact effective.

Since this action was taken, several of the other western states have indicated their desire to become parties to this compact and inquiries as to procedure have been received from Nebraska, South Dakota and Utah, in response to which our office sent copies of the compact and citation to our enabling act.

It would seem that this action would be very significant and go a long way in assisting the law enforcement officers in their battle against organized crime, and with whole-hearted cooperation from the compacting states, it is our confident belief that if the compact is ratified by the various legislatures that this whole program will be of inestimable value.

INTERSTATE WATER MATTERS

It is a universally accepted fact that Colorado has no natural asset of greater importance than its water resources, nor can there be any diversity of opinion but that every possible expenditure of time and money should be made which may be necessary to establish, preserve and protect our rights and equities in and to the waters of our interstate streams. Since nature has placed Colorado in the favorable position as the upper river state on each of the five major streams originating within our boundaries, it necessarily results that this state is usually made a defendant in any interstate controversy which arises concerning the waters of such streams. Three of such interstate controversies have resulted in suits which are now pending before the United States Supreme Court. Such pending suits, or suits disposed of during the past biennium, together with pending compact negotiations, are as follows:

(1) *Arizona vs. California, Colorado, et al.*:

The State of Arizona, on November 25, 1935, filed a motion in the United States Supreme Court for leave to file her Bill of Complaint against the States of California, Colorado, Nevada, New Mexico, Utah and Wyoming. The proposed Bill of Complaint sought, first, to obtain an equitable apportionment of the waters of the Colorado River among all of the seven states of the Colorado River Basin, and to quiet Arizona's title to such equitable portion against the adverse claims of the defendants; and, second, to obtain a judicial determination of the quantity of said waters, which the State of California might legally use within the limitation fixed by the California legislature enacted pursuant to the provisions of the Boulder Canyon Project Act.

In response to the rule to show cause issued by the United States Supreme Court, Colorado filed a return and brief jointly with New Mexico, Utah and Wyoming, assigning objections to the granting of Arizona's motion for leave to file the Bill of Complaint. Upon somewhat different grounds, the State of California and Nevada joined in a separate return setting forth their respective objections to the granting of the motion.

The Supreme Court, after having heard oral argument, denied the motion of Arizona in an opinion rendered on May 25, 1936, and which is reported in 298 U. S. 558.

(2) *Wyoming vs. Colorado*:

The present suit was instituted by the State of Wyoming against the State of Colorado on October 6, 1930, and involves the interpretation of the decree of the United States Supreme Court entered in the former case bearing the same title under date of June 5, 1922 (259 U. S. 419), which was modified by the later decree entered on October 9, 1922 (260 U. S. 1). Following the usual preliminary motions, Colorado filed her answer, and the case was brought to issue upon the filing of Wyoming's replication on October 31, 1932. Testimony was taken before commissioners appointed by the Supreme Court during the summer and fall of 1933. Thereafter the evidence was abstracted, briefs filed, and the case argued orally before the United States Supreme Court February 11 and 12, 1936.

The court handed down its decision on June 1, 1936.

The decision of the court was generally favorable to the legal propositions urged by Colorado, but was against our contention with respect to the use of water from the Laramie River in the mountain meadow lands. Colorado urged in this respect that the former decree should be construed so as to permit irrigators in the meadow lands to use annually 4250 acre feet of water measured by the principle of consumptive use, but the court held that under the decree in the earlier case (259 U. S. 419), such irrigators were limited to diversions of 4250 acre feet measured at the

headgates. The court has granted extension of time in which to file petition for rehearing if our efforts to agree upon an amicable adjustment with Wyoming should fail of consummation.

(3) *Colorado vs. Kansas:*

This case, which involves the use of the waters of the Arkansas River, is still pending before the United States Supreme Court. A special commissioner was appointed by the United States Supreme Court to take the testimony, and the evidence, on behalf of both states, is now practically complete. It is expected that all testimony will be abstracted and briefs filed during the ensuing summer, after which the case will be ready for submission and oral argument before the court.

As reported by my predecessor, the late Attorney General Paul P. Prosser, both Kansas and Colorado, recognizing the importance and value to the citizens of each state, have joined in urging the construction of the Caddoa Reservoir through aid of the United States Government. In the event the Caddoa Reservoir is constructed, the flood waters of the Arkansas River, which are now going to waste, would be captured for the use and benefit of the water users of both Kansas and Colorado, and would doubtless largely remove the basis for the present controversy between the two states.

(4) *Nebraska vs. Wyoming and Colorado:*

The State of Nebraska in the fall of 1935 filed her bill of complaint in the United States Supreme Court against the State of Wyoming respecting the division of the waters of the North Platte River. Thereafter, upon motion of the State of Wyoming, the court ordered the State of Colorado to be made a party defendant, and file answer setting forth her claims to the waters of the North and South Platte Rivers. In due time Colorado filed her answer and cross bill asserting her rights to the waters of both streams involved in the controversy, and asking the court to find and determine the equitable share and apportionment of the waters of the North Platte to which Colorado and the other two states are justly entitled. The pleadings have been fully made up and testimony is now being taken by the Master in Chancery appointed by the United States Supreme Court. Since the character and extent of the testimony which Colorado will be required to present depends in a large measure upon the evidence introduced by the States of Nebraska and Wyoming, it is impossible at this time to state just when the taking of testimony will be closed.

(5) *Hinderlider, as State Engineer of Colorado, et al. vs. La Plata River and Cherry Creek Ditch Company:*

This case, which was noticed in the last report of this office, involves the administration of the provisions of the compact en-

tered into on November 27, 1922 by the commissioners of the States of Colorado and New Mexico relative to the diversion and use of the water of the La Plata River. This case went to the Supreme Court of the United States, and that court declined to pass upon the merits of the case by reason of the absence of final judgment (291 U. S. 650). The case was thereafter returned to the District Court of La Plata County for further action pursuant to the opinion of the court. The decision in the District Court of La Plata County was adverse to the contention urged by the water officials of the state and a writ of error was again prosecuted therefrom to the Supreme Court of Colorado. The suit is now at issue in the Colorado Supreme Court and doubtless a decision by the court may be anticipated before its summer adjournment.

(6) *Rio Grande River Compact:*

On February 12, 1929, the commissioners of the State of Colorado, New Mexico and Texas signed a compact, which was approved by the Colorado legislature on April 9, 1929, respecting waters of the Rio Grande River, which compact by its terms was to continue in no event, without further action, beyond June 1, 1935. Thereafter on April 13, 1935 the legislature of Colorado extended this temporary compact providing that its term should continue in force and effect for a further period not later than June 1, 1937. The legislatures of the other two signatory states took appropriate similar action which was also approved by act of the Congress of the United States. In the meantime, the Interstate River Commissioner, M. C. Hinderlider, has continued conferences with the commissioners of the other two states concerned in an effort to agree upon terms for a permanent compact.

In this connection, it may be mentioned that in order to assist in the gathering of factual data for use of the Rio Grande compact commissioners, the State of Colorado has joined in the investigation which has been undertaken by the National Reservoir Commission, a Federal Agency, and contributed its allotted share in both personnel and funds.

A representative of this office has attended the several conferences held and given full support by way of legal advice to Mr. Hinderlider, the Compact Commissioner of Colorado, who no doubt will fully advise you in his report with respect to the progress made in connection with a final agreement on a compact.

(7) *Compact Relating to Republican and Arickaree Rivers:*

The compact commissioners representing the State of Colorado and Nebraska have had under consideration the negotiation of the terms of the compact to cover the utilization of the waters of the north and south forks of the Republican River and the Arickaree River. At the several conferences held by the commissioners of the two states concerned the representative of this

office has been present and cooperated as legal adviser with Mr. Hinderlider, the Colorado Commissioner.

INHERITANCE TAX DIVISION

Through this Division of the Department of Law there has been collected during the period from December 1, 1934, to November 30, 1936, the sum of \$1,348,488.39. This amount would have been materially increased if the Act of Congress of the years 1932, 1934 and 1936 in connection with the Federal Estate Tax had allowed the usual credit of 80% of the Federal Tax as provided for in the Federal Act of 1926 for payment of inheritance taxes to the States.

The amount expended by this Division in the collection of this sum, including salaries and all expenses, was \$35,883.75, being 2.6 per cent, which is exceptionally low when the volume of work and technicality of same is considered.

There has also been turned over to the State Treasurer the sum of \$18,416.21 collected from Escheat Estates.

The sum of \$112,211.36 was also collected under the Old Age Pension Act.

The number of Treasurer's receipts issued on estates examined being receipts numbered from 64,053 to 71,804, inclusive, show that 7751 estates have been handled during this period, of which 983 were taxable or approximately one-eighth.

Upon the recommendation of Mr. George Hetherington, the Commissioner, to the Thirtieth General Assembly there were enacted some amendments to the 1933 Inheritance Tax Act which improved and strengthened the law under which we are now operating.

CONCLUSION

In conclusion, I desire to commend the entire office force, both men and women, for the very loyal and able work they have performed during the biennial period.

To single out and mention each member of the force, giving special credit where it is due, would require too much space for this report, but I cannot too highly commend the loyalty, integrity and devotion of the entire force to the interests of the people of Colorado in the performance of the duties which devolved upon them, and to them is due a large share of the credit for whatever degree of success has been attained by the office in the performance of its duties during the last biennial period.

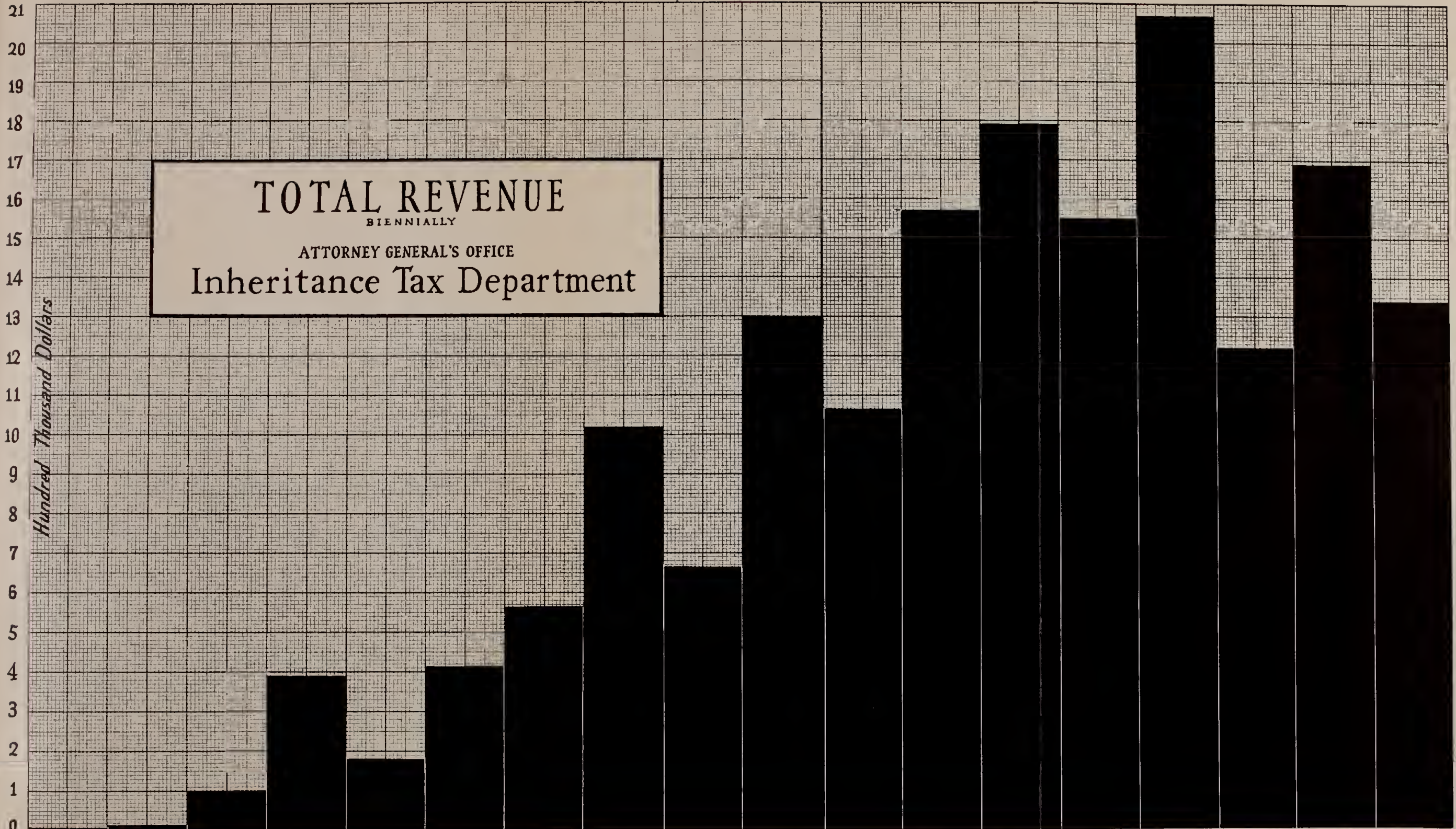
Respectfully submitted.

BYRON G. ROGERS,
Attorney General.

TOTAL REVENUE
BIENNIALY
ATTORNEY GENERAL'S OFFICE
Inheritance Tax Department

Hundred Thousand Dollars

1901 - '02 '03 - '04 '05 - '06 '07 - '08 '09 - '10 '11 - '12 '13 - '14 '15 - '16 '17 - '18 '19 - '20 '21 - '22 '23 - '24 '25 - '26 '27 - '28 '29 - '30 '31 - '32 '33 - '34 '35 - '36



SCHEDULE II

LIST OF ALL CASES, PENDING AND DISPOSED OF, IN ALL COURTS

1935-1936

CASES IN THE SUPREME COURT OF THE UNITED STATES

- No. 15. Original. October Term, 1927. *State of Colorado v. State of Kansas et al.* Original proceeding to determine rights of the parties to water in the Arkansas River. Evidence being taken as and when commissioner directs. Pending.
- No. 20. October Term, 1930. *State of Wyoming v. State of Colorado.* Construction of former Wyoming-Colorado decree to enjoin use of waters of Laramie River. Decision generally favorable to Colorado, June 1, 1936. Pending on petition for rehearing on portion of opinion.
- No. 588. October Term, 1933. *M. C. Hinderlider as State Engineer, et al. v. The La Plata River and Cherry Creek Ditch Company.* Appeal from judgment of Colorado Supreme Court involving rights of appropriation on interstate stream under provisions of the state compact. Dismissed for want of final judgment March 12, 1934. Remanded by Colorado Supreme Court to District Court of La Plata County. Pending in Colorado Supreme Court on appeal from District Court of La Plata County.
- No. 568. *United States Building and Loan Association, et al. v. McClelland.* Petition for writ of certiorari. Writ denied January 14, 1935.
- No. 384. *Kress and Company, et al. v. Johnson, et al.* Petition for writ of certiorari from judge of Federal Court settling constitutionality of restaurant law. Motion to dismiss sustained October, 1936. Rehearing denied December 7, 1936.
- No. *State of Arizona v. State of California, et al.* Motion for leave to file bill of complaint. Denied May 25, 1936.
- No. *State of Nebraska v. State of Wyoming.* State of Colorado ordered to interplead. Testimony ordered taken. Pending.
- No. *H. E. Woolsey v. Roy Best.* Appeal from Supreme Court of Colorado. Motion to dismiss affirmed October 15, 1936.

- No. *State of Texas v. State of New Mexico*. Motion of New Mexico to make State of Colorado party defendant. Motion denied March 2, 1936.

CASES IN THE UNITED STATES DISTRICT COURT

- No. 52527 (N. Y.) *In the matter of Kountze Brothers et al.* (bankrupt). Claim of State of Colorado for money on deposit for payment of bond interest. Pending.
- No. 10387. *Regents of the University of Colorado v. National Surety Company*. Dismissed on settlement agreement February 15, 1936.
- No. 10377. *School of Mines v. Adams, Receiver*. Suit to establish preferred claim. Demurrer sustained. Dismissed January 7, 1936.
- No. 10451. *Continental Oil Company et al. v. Bedford et al.* Suit to restrain collection of chain-store tax. Dismissed November 2, 1935. Appeal to State Supreme Court pending.
- No. 10524. *Larson et al. v. American Life Insurance Company et al.* Application for receiver and injunction. Suit dismissed on settlement December 23, 1935.
- No. 10549. *Newton v. Roy Best*. Application for writ of habeas corpus. Writ dismissed July 25, 1935.
- No. 10567. *Kress et al. v. Johnson et al.* Injunction proceeding under Restaurant Act. Dismissed July 24, 1935. Appealed to United States Supreme Court, which refused jurisdiction on Dec. 7, 1936.
- No. 10770. *Mary Sue Saunders v. Clement A. Bowle et al.* Injunction to restrain tax collection. Pending.

CIVIL CASES IN THE SUPREME COURT OF COLORADO

13641. *Glenwood Light & Water Company, et al. v. City of Glenwood Springs*. Action to review judgment of District Court of Garfield County, Colorado, modifying an order of The Public Utilities Commission fixing rates within the City of Glenwood Springs. Error to the District Court of Garfield County. Judgment affirmed March 2, 1936. Rehearing denied March 30, 1936.
13648. *The Denver & Rio Grande Western Railroad Company, et al. v. Town of Castle Rock, M. E. Hyde, and State Board of Land Commissioners*. Error to the District Court of Pueblo. Proceedings to set aside a judgment against the town of Castle Rock, which was the basis for a bond issue. Judgment affirmed November 9, 1936.

13841. *Leo L. Spears v. Public Utilities Commission, et al.* Error to the District Court of the City and County of Denver. Proceeding to review an order of the Public Utilities Commission refusing to accept jurisdiction of a public utility operating within the City and County of Denver. Pending.
13927. *The Public Utilities Commission of the State of Colorado, et al. v. William Manley, et al.* Error to the District Court of Fremont County, Colorado, to review judgment of the District Court declaring Chapter 167, Session Laws of 1935, unconstitutional. Judgment reversed July 28, 1936, and remanded to the District Court with instructions. Rehearing denied September 21, 1936.
13235. *People ex rel. Park Reservoir Company v. Hinderlider, et al.* Error to District Court of Delta County. Water appropriation. Petition for rehearing denied April 27, 1936.
13358. *Riverside Reservoir and Land Company v. Hinderlider, et al.* Error to District Court of Weld County. Case involving water rights. Affirmed April 1, 1935.
13359. *Bijou Irrigation District v. Hinderlider, et al.* Error to District Court of Weld County. Case involving water rights. Affirmed April 1, 1935.
13361. *Bowles v. Miller, et al.* Error to District Court of City and County of Denver. Construction of reservoir on state land. Affirmed January 7, 1935.
13367. *People of State of Colorado ex rel. Industrial Commission v. Aladdin Theatre Corporation, et al.* Error to District Court of City and County of Denver. Affirmed April 29, 1935.
13368. *People of State of Colorado ex rel. Industrial Commission v. Amusement Enterprises, Inc., et al.* Error to District Court of City and County of Denver. Affirmed April 29, 1935.
13481. *The Colorado Utilities Corporation v. The Public Utilities Commission of the State of Colorado.* Action to review an order of The Public Utilities Commission. Error to the District Court of the City and County of Denver. Judgment reversed September 30, 1935. Rehearing granted December 23, 1935. On rehearing, judgment affirmed June 22, 1936. Petition for rehearing denied October 5, 1936.
13555. *Highland Utilities Company v. The Public Utilities Commission of the State of Colorado.* Action to review an order of The Public Utilities Commission requiring the continuance of service in Town of Kit Carson. Error to the District Court of the City and County of Denver. Judgment affirmed April 22, 1935. Modified opinion filed and rehearing denied May 20, 1935.

13596. *State of Colorado v. Tolbert, et al.* Error to District Court of Baca County. Injunction to restrain illegal importation of motor fuel. Reversed March 23, 1936.
13611. *Johnson, et al. v. Kelly.* Error to District Court of the City and County of Denver. Civil service case. Reversed January 7, 1935. Rehearing denied January 28, 1935.
13620. *People ex rel. Paul Prosser, et al. v. Estate of Hadfield, et al.* Error to District Court of Logan County. Inheritance tax. Pending.
13650. *Horton, et al. v. Fountain Valley School.* Error to District Court of El Paso County. Tax exemption case. Affirmed in part, reversed in part April 6, 1936.
13658. *Wade, et al. v. State of Colorado.* Error to District Court of City and County of Denver. Petition for injunction. Affirmed.
13715. *People ex rel. Attorney General v. Bentall.* Original proceeding in disbarment. Respondent disbarred October 8, 1935.
13718. *People ex rel. Attorney General v. Brayton.* Original proceeding in disbarment. Pending.
13726. *In re Estate of Estelle Hunter.* Error to District Court of City and County of Denver. Old Age Pension Act. Affirmed September 9, 1935.
13787. *Interrogatories In Re: Ch. 118, S. L. 1935.* Original Proceeding. Act held constitutional November 18, 1935. Opinion modified December 9, 1935.
13805. *Interrogatories In Re: Ch. 89, S. L. 1935.* Original Proceeding. Act held unconstitutional October 28, 1935.
13822. *H. L. Shaffer and Company v. Paul P. Prosser, Attorney General.* Error to District Court of City and County of Denver. Revocation of security dealer's license. Affirmed November 2, 1936.
13813. *People ex rel. Stone v. District Court of El Paso County, et al.* Original application for writ of certiorari. Denied.
13918. *J. E. Creel, as Treasurer of Pueblo County v. Pueblo Masonic Building Association.* Error to District Court of Pueblo County. Action to collect taxes. Pending.
13940. *LeOra Orr, et al. v. State of Colorado Board of Land Commissioners.* Error to District Court of Jefferson County. Case in eviction. Pending.
13945. *Brown, et al. v. Fenton, et al.* Error to District Court of Kit Carson County. Action in ejectment. Affirmed June 8, 1936.

13946. *George E. Saunders as Secretary of State v. Norton*. Error to District Court of City and County of Denver. Liquor license case. Reversed May 11, 1936.
13949. *City of Sterling v. Board of County Commissioners of Logan County*. Error to District Court of Logan County. Re: License fees on beer tax. Affirmed July 27, 1936.
14019. *People of State of Colorado ex rel. Attorney General v. Nolon*. Original proceeding in disbarment. Pending.
14002. *M. C. Hinderlider, et al. v. La Plata River and Cherry Creek Ditch Company*. Error to District Court of La Plata County. Determination of water rights. Pending.
14006. *George E. Saunders as Secretary of State v. The People of the State of Colorado ex rel. Tyler, et al.* Error to District Court of City and County of Denver. Mandamus to compel registration of non-profit corporation. Reversed December 7, 1936.
13999. *Joe Pallas, et al. v. Johnson, et al.* Error to District Court of El Paso County. Injunction to restrain Executive Council awarding contract. Pending.
- *People ex rel. Attorney General v. Kimsey*.
- *People ex rel. Attorney General v. Wicks*.
- *People ex rel. Attorney General v. Bennett*.
- *People ex rel. Attorney General v. Jersin*.
Original Proceedings in contempt. Pending.

CRIMINAL CASES IN THE SUPREME COURT OF COLORADO

No.	Title	Crime	Disposition
13397	Sharer v. People.	Embezzlement.	Reversed April 15, 1935.
13502	Smalley v. People.	Habitual Criminal Act.	Reversed March 18, 1935.
13549	West v. People.	Embezzlement.	Reversed November 25, 1935.
	Blackett v. People.	Embezzlement.	Reversed November 25, 1935.
13557	Dockerty and Lombardi v. People.	Aggravated Robbery	Affirmed March 4, 1935.
13588	Pacheco and Pacheco v. People.	Murder.	Affirmed March 25, 1935.
13614	Lewis et al. v. People.	Embezzlement.	Reversed June 29, 1936.
13632	Schtul v. People.	Malicious Mischief.	Reversed January 28, 1935.
13606	Davis v. People.	Confidence Game.	Reversed January 28, 1935.
13637	Newton v. People.	Larceny.	Affirmed February 4, 1935.
13659	Woolsey v. People.	Bank Fraud.	Affirmed November 25, 1935.
13663	Miller v. People.	Larceny.	Reversed February 24, 1936.
13670	Windolph and Jermak v. People.	Burglary.	Affirmed February 25, 1935.
13705	Webb v. People.	Assault.	Reversed August 19, 1935.
13734	Manship v. People.	Rape.	Affirmed June 1, 1935.
13752	Hurley v. People.	Violation of Medical Act.	Reversed December 24, 1936.
13755	Howard v. People.	Murder Accessory.	Affirmed November 4, 1935.
13756	Granato v. People.	Rape.	Affirmed August 12, 1935.
13788	Kidd v. People.	Receiving Stolen Goods.	Reversed September 10, 1935.
13806	DeSalvo v. People.	Rape.	Affirmed March 9, 1935.
13835	Pappas v. People.	Perjury.	Affirmed February 10, 1936.
13836	Pappas v. People.	Perjury.	Affirmed February 10, 1936.
13856	Hummel v. People.	Larceny.	Reversed December 16, 1936.
13861	Jones v. People.	Malicious Mischief.	Reversed February 3, 1936.
13882	Brock v. People.	Rape.	Affirmed February 3, 1936.
13858	People v. Spinuzza.	Receiving Stolen Goods.	Dismissed November 9, 1936.
13789	Helser and O'Hanlon v. People.	Embezzlement.	Pending.
13943	Monfreda and Garrison v. People.	Larceny.	Reversed August 10, 1936.
13974	People v. Nakamura.	Possession of Firearms.	Affirmed September 5, 1936.
13996	Smith v. People.	Arson.	Pending.
13983	Carr v. People.	Conspiracy.	Affirmed December 14, 1936.
13984	O'Toole v. People.	Conspiracy.	Affirmed December 14, 1936.
14024	Kidd v. People.	Receiving Stolen Goods.	Affirmed October 5, 1936.
14051	Ray v. People.	Liquor Violation.	Affirmed November 23, 1936.

WORKMEN'S COMPENSATION CASES IN THE SUPREME COURT OF COLORADO

No.	Title of Cause	Judgment of Lower Court	Status
13619	The Rocky Mtn. Fuel Co. et al. v. Ind. Com. and Arthur Canivez.	Award Affirmed.....	Judgment Affirmed January 21, 1935 (96 Colo. 198)
13661	Kathryne McBride et al. v. Ind. Com. and Employers' Liability Assurance Corp.....	Award Affirmed.....	Judgment Reversed With Directions March 11, 1935 (97 Colo. 166)
13651	The Moffat Coal Co. et al. v. Frank Podbelsk and Ind. Com...	Award Affirmed.....	Judgment Affirmed March 11, 1935 (96 Colo. 355)
13669	The Rocky Mtn. Fuel Co. et al. v. Ind. Com. and Wm. L. Sher- att	Award Affirmed.....	Judgment Reversed March 11, 1935 (96 Colo. 463)
13649	London Guarantee and Accident Co. et al. v. Ind. Com. and Albert A. Coffeen	Award Affirmed.....	Judgment Affirmed March 18, 1935 (96 Colo. 375)
13573	August Frank v. Ind. Com. and Black Diamond Fuel Co.....	Award Affirmed.....	Judgment Reversed With Directions on Rehearing March 18, 1935 (96 Colo. 364)
13654	A. Danielson and Sons et al. v. Ind. Com. and Hilma L. Ness...	Award Affirmed.....	Judgment Affirmed April 22, 1935 (96 Colo. 522)
13706	Yordanna Evanoff v. Ind. Com., Rocky Mtn. Fuel Co. et al.....	Award Affirmed.....	Judgment Affirmed May 6, 1935 (96 Colo. 550)
13686	United States Fidelity and Guar- anty Co. et al. v. Ind. Com. and Mrs. Mary Yuenger.....	Award Affirmed.....	Judgment Affirmed May 13, 1935 (96 Colo. 571)
13625	London Guarantee and Accident Co. et al. v. Fay W. McCoy and Ind. Com.....	Award Affirmed.....	Judgment Affirmed May 27, 1935 (97 Colo. 13)
13681	United States Fidelity and Guar- anty Co. v. Ind. Com. et al.....	Award Affirmed.....	Judgment Reversed June 3, 1935 (97 Colo. 102)
13721	Consolidated Coal and Coke Co. et al. v. Sam M. Todoroff and Ind. Com.....	Award Affirmed.....	Judgment Affirmed June 17, 1935 (97 Colo. 125)
13724	The Denver Union Terminal Rail- way Co. v. Ind. Com. and Joseph L. Saxe.....	Award Affirmed.....	Judgment Reversed June 17, 1935 (97 Colo. 129)

No.	Title of Cause	Judgment of Lower Court	Status
13739	Arthur Roeder as Receiver of the Colo. Fuel and Iron Co. v. Ind. Com. and George L. Hof- man	Award Affirmed.....	Judgment Affirmed June 17, 1935 (97 Colo. 133)
13666	Joseph Dorchak v. Golden Farm Dairy, Ind. Com. et al.....	Remanded to Ind. Com....	Writ of Error Dismissed and cause remanded for further proceedings June 24, 1935 (97 Colo. 142)
13735	The Morey Merc. Co. et al. v. Ind. Com. and Wm. B. Flynt...	Award Affirmed.....	Judgment Reversed July 15, 1935 (97 Colo. 163)
13745	Emma Trauner v. Climax Molyb- denum Co., Ind. Com. et al.....	Award Affirmed.....	Judgment Affirmed July 15, 1935 (97 Colo. 166)
13712	The Independence Coffee and Spice Co. et al. v. W. M. Taylor and Ind. Com.....	Award Affirmed.....	Judgment Reversed August 5, 1935 (97 Colo. 242)
13668	Ind. Com., City and County of Denver et al. v. Lucy M. Ule...	Award Set Aside.....	Judgment Affirmed August 19, 1935 (97 Colo. 253)
13675	Ind. Com., O. P. Skaggs et al. v. John C. Nixon.....	Award Set Aside.....	Judgment Affirmed in part and Reversed in part September 9, 1935 (97 Colo. 314)
13775	Rocky Mtn. Fuel Co. et al. v. Ind. Com. and Nick Maes.....	Award Affirmed.....	Judgment Affirmed September 9, 1935 (97 Colo. 300)
13746	Ind. Com., State Comp. Ins. Fund et al. v. Bernice K. White et al.	Award Set Aside.....	Judgment Reversed September 9, 1935 (97 Colo. 322)
13776	Anne Brezinsky et al. v. Ind. Com. et al.....	Award Affirmed.....	Judgment Affirmed September 30, 1935 (97 Colo. 415)
13816	H. C. Hull v. The Denver Tram- way Corp. and Ind. Com.....	Award Affirmed.....	Motion to Dismiss Writ of Error Granted October 21, 1935 (97 Colo. 523)
13827	Moffat Coal Co. et al. v. Pete Cometa and Ind. Com.....	Award Affirmed.....	Judgment Affirmed November 12, 1935 (97 Colo. 573)
13837	George W. Phillips, Ind. Com. et al. v. John Shastid.....	Award Set Aside.....	Writ of Error Dismissed November 12, 1935
13767	Velma C. Griffin et al. v. Ind. Com., A. W. Allard et al.....	Award Affirmed.....	Judgment Affirmed November 25, 1935 (98 Colo. 35)

No.	Title of Cause	Judgment of Lower Court	Status
13820	Ind. Com. and Schriber-Hartman Decorating Co. v. W. R. Barton.	Award Set Aside....	Judgment Reversed December 9, 1935 (98 Colo. 51)
13770	Arthur Roeder as Trustee for Colo. Fuel and Iron Co. v. Ind. Com. and Pete Stamas.....	Award Affirmed.....	Judgment Affirmed in part and Reversed in part December 16, 1935 (98 Colo. 95)
13889	Pietro Di Gregorio v. Monroe Coal Co., Ind. Com. et al.....	Award Affirmed.....	Judgment Affirmed February 24, 1936 (98 Colo. 267)
13815	Pearl Morrow v. Ind. Com., State Comp. Ins. Fund et al.....	Award Affirmed.....	Judgment Reversed on Rehearing March 2, 1936 (98 Colo. 348)
13884	Martin Mishmish and Ind. Com. v. Hayden Coal Co. et al.....	Award Set Aside....	Judgment Reversed March 9, 1936 (98 Colo. 373)
13906	Leyden Lignite Coal Co. et al. v. Joe Buddy and Ind. Com.....	Award Affirmed.....	Judgment Affirmed March 23, 1936 (98 Colo. 452)
13892	Imperial Coal Co. et al. v. Roy Holland and Ind. Com.....	Award Affirmed.....	Judgment Affirmed March 23, 1936 (98 Colo. 448)
13832	Ind. Com. and Ben Resetta v. Schaefer Realty Co.....	Award Set Aside....	Judgment Affirmed March 23, 1936 (98 Colo. 445)
13947	State Comp. Ins. Fund et al. v. Ind. Com., Lars Nerim et al....	Award Affirmed.....	Judgment Affirmed June 8, 1936 (98 Colo. 563)
13910	Black Diamond Fuel Co. et al. v. August Frank and Ind. Com....	Award Affirmed.....	Judgment Reversed With Directions June 29, 1936 Opinion Withdrawn December 7, 1936 Pending
13904	Century Indemnity Co. v. Her- man Klipfel, Ind. Com. et al....	Award Affirmed.....	Judgment Affirmed June 29, 1936 (99 Colo. ...)
13843	Felix L. Bukowich, Ind. Com. et al. v. The Ford Motor Co. et al.	Award Set Aside....	Judgment Affirmed June 29, 1936 (99 Colo. ...)
13908	London Guarantee and Accident Co. et al. v. John Shireman and Ind. Com.....	Award Affirmed.....	Judgment Affirmed July 6, 1936 (99 Colo. ...)
13745	Security State Bank of Sterling et al. v. Olive W. Propst and Ind. Com.....	Award Affirmed.....	Judgment Affirmed July 6, 1936 (99 Colo. ...)

No.	Title of Cause	Judgment of Lower Court	Status
13970	Lindner Packing and Prov. Co. et al. v. Ind. Com., Jeanne O'Grady et al.....	Award Affirmed.....	Judgment Affirmed July 20, 1936 (99 Colo. ...)
13978	Board of County Comm. of Eagle County, Ind. Com. et. al. v. W. F. Evans	Award Set Aside.....	Judgment Reversed August 10, 1936 (99 Colo. ...)
13929	Carey W. Rhodes et al. v. Ind. Com. and Mrs. Maye Henderson.	Award Affirmed.....	Judgment Affirmed October 5, 1936 (99 Colo. ...)
14007	State Comp. Ins. Fund et al. v. Jewell Clark Hartman and Ind. Com.	Award Affirmed.....	Judgment Affirmed October 19, 1936 Rehearing Pending (99 Colo. ...)
13988	United States Fidelity and Guar- anty Co. et al. v. Ind. Com. and N. O. Lipe.....	Award Affirmed.....	Judgment Affirmed October 19, 1936 (99 Colo. ...)
13973	National Lumber and Creosoting Co. et al. v. Joseph A. Kelly and Ind. Com.....	Award Affirmed.....	Judgment Reversed With Directions December 14, 1936 (.. Colo. ...)
14057	Ind. Com., City and County of Denver et al. v. Edith R. Witz et al.	Award Set Aside.....	Pending

CASES IN THE DISTRICT COURTSDocket
Number**Adams County**

3431. *Board of County Commissioners and State Highway Department v. Pomponio, et al.* Condemnation. Award January 23, 1935.
- *Pierce, et al. v. Colorado-Midland Refineries, Inc., et al.* Suit for accounting and receiver. Pending.
- *County Commissioners of Adams County and State Highway Department v. Shearston, et al.* Condemnation. Pending.

Arapahoe County

- *Board of County Commissioners v. Trogler, et al.* Condemnation. Pending.
4051. *Cline, et al. v. Hanson, et al.* Tax exemption case involving property belonging to order of Eastern Star. Injunction granted January 14, 1935.
5005. *State Highway Department v. Martin, et al.* Condemnation. Pending.

Boulder County

- *Burnside and Robinson, doing business as Elliott Tours, et al. v. Regents of the University of Colorado.* Injunction to restrain operation of bus. Dismissed July 3, 1935. Appealed to Supreme Court.

Clear Creek County

- *Board of County Commissioners of Clear Creek County and State Highway Department v. Cazin.* Condemnation. Judgment for defendants September 15, 1935.
8851. *Highway Department, et al. v. Millard.* Condemnation. Pending.
8871. *Radium Hot Springs v. Walthers.* Tax case. Pending.
9002. *Board of County Commissioners of Clear Creek County and State Highway Department v. Klein, et al.* Condemnation. Pending.
9006. *Board of County Commissioners of Clear Creek County and State Highway Department v. Curry, et al.* Condemnation. Pending.

Conejos County

1924. *People of State of Colorado v. Torres.* Suit for possession. Pending.

Docket
Number**Delta County**

..... *Fairlamb v. Bowle as Treasurer of Delta County.* Tax suit. Pending.

Denver County

A-13540. *In the matter of the estate of John Davis.* Appeal from County Court. Escheat case. Petition for determination of heirship granted and State Treasurer ordered to pay money to heirs.

A-7288. *Margaret Christensen, et al. v. Herbert Peters, et al.* Petition for order requiring State Treasurer to pay to heir distributive share from partition suit. Granted.

A-7754. *Weicker Transfer & Storage Co. v. The Public Utilities Commission, et al.* Writ of certiorari to review an order of the Commission requiring the Weicker Company to cease and desist from charging certain shippers rates less than those prescribed by the Company's tariffs filed with the Commission. Pending.

A-9724. *Tolland, et al. v. The Public Utilities Commission.* Writ of certiorari to review an order of the Commission authorizing The Denver & Salt Lake Railway Company to abandon its station at Tolland, Colorado. Pending.

A-10525. *The Home Gas & Electric Co. v. Public Utilities Commission.* Writ of certiorari to review an order of the Commission reducing electric light and power rates in the City of Greeley and nearby towns. Judgment of the Commission affirmed June 18, 1935.

A-11733. *The People of the State of Colorado, ex rel. The Public Utilities Commission of the State of Colorado v. Gene Simkins and Glenn Whaley.* Suit to enjoin Simkins and Whaley from operating as private carriers by motor vehicle without first having obtained a permit from The Public Utilities Commission. Temporary injunction issued January 30, 1935. Pending.

A-12495. *The Public Service Company of Colorado v. The Public Utilities Commission of the State of Colorado, et al.* Writ of Certiorari to review an order of the Commission requiring the Public Service Company to furnish electric power at wholesale to City of Fort Collins. Motion for change of venue granted on April 22, 1935, and proceedings transferred to District Court of Larimer County, Colorado.

A-13751. *The People of the State of Colorado, ex rel. The Public Utilities Commission of the State of Colorado v. Joe Tate doing business as Globe Forwarding Company.* Injunction proceedings to restrain Tate and his associates from operating as a common carrier without a certificate of public convenience and necessity. Pending.

Docket
Number

- A-14015. *Highland Utilities Company v. The Public Utilities Commission of the State of Colorado, et al.* Writ of certiorari to review order of the Public Utilities Commission denying a proposed increase in electric rates in the town of Springfield, Colorado. Motion to quash writ of certiorari filed and case now pending and undetermined on motion to quash.
- A-14408. *E. L. Boddy v. The Public Utilities Commission of the State of Colorado, et al.* Action for a declaratory judgment to test the constitutionality of Chapter 167, Session Laws of 1935. Demurrer filed January 17, 1936. Now pending and undetermined.
- A-14413. *W. T. Harkey v. The Public Utilities Commission of the State of Colorado.* Proceeding to declare Chapter 167, Session Laws of 1935 unconstitutional, and enjoin its enforcement. Demurrer filed January 17, 1936. Case now pending and undetermined.
- A-14432. *Chas. E. Everitt and Bennie Goldstein v. The Public Utilities Commission of the State of Colorado.* Writ of certiorari to review an order of the Public Utilities Commission denying authority to transfer a permit to operate as a private motor vehicle carrier. Motion to quash writ filed December 31, 1935. Writ of certiorari dismissed without prejudice January 3, 1936.
- A-116128. *Chas. E. Everitt and Bennie Goldstein v. The Public Utilities Commission of the State of Colorado.* Writ of certiorari to review a subsequent order of the Public Utilities Commission denying authority to transfer private permit referred to in No. A-14432. Pending and undetermined.
110717. *Bernstein v. State of Colorado, et al.* Judgment against all defendants July 28, 1936. Not appealed.
- A-1359. *Murphy v. Federal Bldg. & Loan, et al.* Still active.
- A-2719. *People ex rel. Ireland v. Iliff, et al.* Dismissed October 16, 1933.
- A-3047. *Hearon, et al. v. Security Savings & Loan Ass'n, et al.* Still active.
- A-2569. *Chalmers v. Board of Medical Examiners.* Settled April 1, 1932.
- A-6021. *J. Graham Orr v. Longworth, et al.* Receiver discharged February 2, 1934.
- A-6657. *Industrial Comm. of Colo. v. Shields, et al.* Judgment against defendants October 15, 1934.

Docket
Number

- A-7093. *State of Colorado v. Zinn dba West Denver Coal & Oil Co.* Dismissed October 14, 1935.
- A-11510. *People of the State of Colorado v. Frank Bigler.* Injunction to restrain violation of state N. R. A. Demurrer sustained February 5, 1935. Appealed to Supreme Court.
- A-11590. *Alice M. Gaffy v. Getty, et al., as members of the State Civil Service Commission.* Complaint in injunction. Verdict for plaintiff, February 16, 1935. Appealed to Supreme Court.
- A-11765. *People ex rel. Baker v. Alexander, et al.* Mandamus to compel payment of salary. Pending.
- A-11818. *Alice M. Gaffy v. Bedford, et al.* Mandamus to compel payment of salary dismissed.
- A-11818. *Alice M. Gaffy v. Bedford, et al.* Mandamus to compel payment of salary. Dismissed.
- A-11824. *People of the State of Colorado v. G. A. Voges and Albert W. Uphoff.* Suit on bond. Dismissed.
- A-11970. *People ex rel. Jackson Cochrane as Commissioner of Insurance of the State of Colorado v. Helser, et al.* Injunction suit. Demurrer sustained. Appealed to Supreme Court.
- A-12067. *People ex rel. Jackson Cochrane as Commissioner of Insurance of the State of Colorado v. Republic Mutual Insurance Company.* Application for receiver. Receiver appointed March 26, 1935.
- A-12176. *Leman v. Walgreen Company.* Injunction to restrain collection of sales tax. Demurrer sustained April 29, 1935.
- A-12418. *People of the State of Colorado v. Standard Depositors Corporation, et al.* Suit for injunction and receiver. Dismissed.
- A-12463. *People of the State of Colorado ex rel. Jackson Cochrane as Insurance Commissioner v. Pacific States Life Insurance Company.* Petition for liquidation. Pending.
- A-12615. *Myer Drug Stores v. Armstrong as State Treasurer.* Injunction to restrain collection of sales tax. Petition dismissed July 3, 1935.
- A-12799. *Sheldon v. Alexander et al. as State Civil Service Commissioner.* Mandamus to compel certification. Dismissed July 8, 1935.
- A-12385. *In re Securities Service Corporation.* Appeal from order of Securities Commissioner. Appeal withdrawn June 1, 1935.

Docket
Number

- A-12552. *In re H. L. Shaffer and Company*. Appeal from order of Securities Commission. Judgment for commission and appeal dismissed June 14, 1935. Appealed to Supreme Court.
- A-12829. *McDonald v. Johnson as Governor, et al.* Constitutionality of highway bonds. Judgment for plaintiff. Appealed to Supreme Court.
- *Tanner v. Alexander, et al., as Civil Service Commission*. Mandamus. Judgment for defendants December 6, 1935.
- *Courtright v. Legislative Statutory Commission, et al.* Declaratory judgment. Verdict for defendant. Appealed to Supreme Court.
- A-14026. *Wilmore v. Bedford, et al.* Injunction. Judgment for defendant. Appealed to Supreme Court.
- A-14053. *Standard Oil Co. v. Armstrong, et al.* Injunction on chain store tax. Judgment for defendants. Stipulation on appeal pending.
- A-14056. *Continental Oil Company v. Armstrong, et al.* Injunction on chain store tax. Pending.
- A-14166. *Navy Gas and Supply Company v. Armstrong, et al.* Injunction on chain store tax. Pending.
- *Farrenkopf v. Guthner as Manager of Safety of Denver*. Declaratory judgment on Ch. 142, S. L. 1935. Demurrer sustained. Dismissed.
- A-14191. *Publix Cab Company v. Armstrong as State Treasurer*. Declaratory judgment on Ch. 169, S. L. 1935. Pending.
- A-14231. *Ambrose v. Saunders, as Secretary of State*. Declaratory judgment on Liquor Code. Judgment for plaintiffs December 20, 1935.
- A-14467. *Schmitt v. Bowman, et al.* Injunction restraining payment for architect's services. Dismissed January 4, 1936.
- A-14899. *Wilson v. Bowman. Garnishment*. Transferred to Referee in Bankruptcy.
- A-14464. *Miller v. Bowman, et al.* Garnishment. Pending.
- A-14571. *People ex rel. Olsen-Benbow Plumbing and Heating Company v. Johnson, et al.* Mandamus on construction contract. Dismissed February 6, 1936.
- *Thompson v. Colorado National Bank, et al.* Suit on charitable trust commissioner's report. Approved March 27, 1936.

Docket
Number

- A-12002. *Riker and Jenkins v. Union Benefit Association*. Forfeiture of charter. Receiver to liquidate appointed March 31, 1936.
- A-14701. *People of State of Colorado v. Selected Equities Incorporated*. Injunction under Securities Act. Judgment for plaintiff February 15, 1935.
- A-14938. *People of State of Colorado ex rel. Tyler, et al. v. Saunders as Secretary of State*. Mandamus. Judgment for petitioner. Appealed to Supreme Court.
- A-15282. *People of State of Colorado ex rel. Wettengel v. International Service Union*. Quo Warranto. Judgment for petitioner December 18, 1936.
- A-15289. *People of State of Colorado ex rel. Prosser v. International Agency Company*. Receivership. Dismissal April 23, 1936.
- A-15303. *Albert v. Saunders as Secretary of State*. Injunction. Judgment for defendant June 15, 1935.
- A-15934. *People of State of Colorado v. Liquors, Incorporated, et al.* Suit for collection of excise taxes. Pending.
- A-15935. *People of State of Colorado v. Zerobnick*. Suit for collection of excise tax. Pending.
- A-16332. *People of State of Colorado v. Royal, Incorporated, et al.* Suit for collection of excise tax. Pending.
- A-17335. *McKelvey v. State Employees Retirement Association*. Petition for certiorari on retirement pension. Judgment for plaintiff December 9, 1936.
33375. *Powell v. Clennan*. Habeas Corpus. Writ dismissed December 18, 1936.
- A-5530. *Freeman v. Eldridge, et al.* Damages. Dismissed September 11, 1935.
- A-9323. *Collingwood v. State Board of Medical Examiners*. Mandamus. Dismissed September 10, 1936.
- A-10431. *People v. Swanson, et al.* Suit on bond. Dismissed September 10, 1936.

Eagle County

- *County Commissioners of Eagle County and State Highway Department v. Lundgren, et al.* Condemnation. Pending.
948. *Town of Gypsum and State Highway Department v. Mosher, et al.* Condemnation. Pending.

Docket
Number**Elbert County**

930. *The People ex rel. The Public Utilities Commission v. A. B. Semley and N. G. Ruth.* Action for injunction to enjoin unlawful operation as motor vehicle carrier. Pending.

..... *Board of County Commissioners and State Highway Department v. Blomquist, et al.* Condemnation. Pending.

..... *Board of County Commissioners and State Highway Department v. The Porter Thompson Company, et al.* Condemnation. Pending.

..... *Board of County Commissioners and State Highway Department v. Heald.* Condemnation. Pending.

El Paso County

4. *People of the State of Colorado v. C. J. Carey.* Injunction to restrain violation of State N. R. A. Injunction issued January 23, 1935.

20564. *Joe Pallas, et al. v. Johnson, et al.* Injunction on construction contract. Judgment for defendants March 30, 1936. Appealed to Supreme Court.

20722. *State Highway Department and Board of County Commissioners of El Paso County v. McFarland, et al.* Abatement of nuisance. Judgment for plaintiff August 4, 1936.

18429. *Phi Gamma Delta v. Horton, et al.* Suit to enjoin taxes. Pending.

18670. *Midland Terminal Railway Company v. Colorado Tax Commission.* Suit to recover taxes. Pending.

18874. *People ex rel. v. Dollar Building and Loan Association.* Receivership. Pending.

18902. *People ex rel. v. City Savings Building and Loan Association.* Receivership. Pending.

18914. *People ex rel. v. Home Savings Building and Loan Association.* Receivership. Pending.

19125. *Midland Terminal Railway Company v. Colorado Tax Commission.* Suit to set aside assessment. Pending.

20030. *The People ex rel. The Public Utilities Commission v. H. C. Kaufman, et al.* Action to enjoin twenty-three coal truckers from unlawful operation as motor vehicle carriers for hire. Temporary injunction issued January 4, 1935, effective January 15, 1936. Pending.

Docket
Number

Fremont County

5395. *William Manley, et al. v. The Public Utilities Commission of the State of Colorado, et al.* Action to have Chapter 167, Session Laws of 1935, declared unconstitutional and to enjoin its enforcement. Permanent writ of injunction issued January 24, 1936. This judgment was reversed by Supreme Court in *Public Utilities Commission, et al. v. Manley, et al*, No. 13927.
5359. *Fuller v. Driscoll Construction Company, et al.* Damages. Judgment for plaintiff April 24, 1936.
- *In re Bostleman v. Best.* Habeas Corpus. Writ denied October 2, 1936.

Gilpin County

- *The Board of County Commissioners of Gilpin County and State Highway Department v. Eccker.* Condemnation. Pending.

Jefferson County

3127. *State of Colorado ex rel. Miller, et al. v. Orr, et al.* Action for recovery of land. Judgment for plaintiff November 20, 1936. Appealed to Supreme Court.
- *Board of County Commissioners of Jefferson County and State Highway Department v. Boyd.* Condemnation. Pending.
- *Denver Guide Service v. Vail as Highway Engineer.* Injunction. Pending.
3637. *Board of County Commissioners of Jefferson County and State Highway Department v. Bear Creek Development Corporation, et al.* Condemnation. Award appealed to Supreme Court.
3967. *Board of County Commissioners of Jefferson County and State Highway Commission v. Moore, et al.* Condemnation. Pending.
3981. *Board of County Commissioners of Jefferson County and State Highway Department v. Quaintance, et al.* Condemnation. Pending.

Larimer County

7306. *Zimmerman v. Parvin as State Game and Fish Commissioner.* Mandamus to compel award of arbitration. Dismissed March 3, 1936.
12446. *Zimmerman v. Hinderlider, et al.* Action in damages. Demurrer sustained. Suit dismissed October 30, 1936.
7590. *Pierce v. Patterson, et al.* Quiet Title. Pending.

Docket
Number**Larimer County**

7334. *The Public Service Company of Colorado v. The Public Utilities Commission of the State of Colorado, et al., City of Fort Collins, Intervenor.* Same case as A-12495 docketed in Larimer County on change of venue from the City and County of Denver. Dismissed by agreement.

Las Animas County

14610. *The People ex rel. The Public Utilities Commission of the State of Colorado v. Roy Poole.* Action to enjoin unlawful operation by Poole as a common carrier by motor vehicle without a certificate of public convenience and necessity. Temporary injunction issued December 18, 1936. Pending.

Lincoln County

1105. *State of Colorado and State Board of Land Commissioners v. Larsen, et al.* Application for receiver. Application granted June 8, 1935.
- *Kistler v. Thompson and State Board of Land Commissioners.* Specific performance. Pending.

Mesa County

5766. *John Lewis Ford v. Frewen, et al. as members of the State Board of Examiners of Architects.* Suit to compel issuance of license. License issued and case dismissed March 7, 1935.
7. *People v. Shaw.* Injunction on State N. R. A. Dismissed.

Montrose County

7. *People v. Holland.* Injunction on State N. R. A. Dismissed.

Park County

2073. *Young v. Board of County Commissioners of Park County, et al.* Declaratory Judgment. Pending.
1932. *Miller v. Barkley.* Injunction and damages. Pending.
1959. *Northern Colorado Irrigation Company, et al. v. Miller, et al.* Water priorities. Pending.

Phillips County

2015. *Carlson, et al. v. Austin, et al., as County Commissioner of Phillips County and State Board of Land Commissioners.* Suit to establish boundary. Settled by agreement. May 13, 1936.

Prowers County

- *City of Lamar v. The Public Utilities Commission, et al.* Writ of certiorari to review an order of the Commission allowing reparation to the Town of Granada. Dismissed with prejudice.

Docket
Number**Pueblo County**

24004. *The Forbush Company v. Homer F. Bedford as State Treasurer.* Suit to recover motor fuel tax. Pending.
24098. *The Forbush Company v. Homer F. Bedford as State Treasurer.* Suit to recover motor fuel tax. Pending.
24155. *Pueblo Masonic Building Association v. Creel as Treasurer of Pueblo County.* Injunction on tax sale. Judgment for plaintiff. Appealed to Supreme Court.
24595. *Walters Brewing Company, et al. v. Saunders as Secretary of State.* Judgment for plaintiff, July 2, 1936.
- *Biggerstaff v. Zimmerman.* Slander. Pending.

Rio Grande County

3829. *People v. McGuire.* Mandamus. Pending.

Teller County

- 4446-60-79. *Midland Terminal Railway Company v. Colorado Tax Commission.* Pending.

Washington County

- *Otis Investment Company v. State Highway Department.* Suit on contract. Dismissed December 31, 1934.
8427. *School District No. 32 v. Patterson.* Injunction. Pending.

Weld County

9070. *The Town of Hudson and State Highway Department v. Wehrman, et al.* Condemnation. Pending.

WORKMEN'S COMPENSATION CASES IN THE DISTRICT COURTS OF COLORADO

(Action to Set Aside Awards of the Industrial Commission of
Colorado)

Boulder County

Title	No.	Judgment of the District Court
Barton v. Ind. Com., et al.....	9600	Award set aside (Judgment reversed in Supreme Court)
Mock v. Tom Tisone, Ind. Com., et al...	9710	Pending on motion to dismiss

Denver County

Allan, et al. v. Albert Gadlois and Ind. Com.	A-16630	Pending
Black Diamond Fuel Co., et al. v. August Frank and Ind. Com.....	A-14255	Award affirmed (Judgment reversed in Supreme Court—pending on petition for rehearing)
Blixit v. Ind. Com., et al.....	A-11417	Pending
Brezinsky v. Ind. Com., et al.....	A-12444	Award affirmed (Judgment affirmed in Supreme Court)
Consolidated Coal & Coke Co., et al. v. Sam M. Todoroff and Ind. Com.....	A-11932	Award affirmed (Judgment affirmed in Supreme Court)
Consolidated Fast Freight v. Ind. Com. and Walker	A-15261	Remanded to Ind. Com. for further action
Davis v. Colo. Nat'l Gold, Inc., Ind. Com., et al.....	A-13051	Dismissed
Davis v. Colo. Nat'l Gold, Inc., Ind. Com., et al.....	Award affirmed	
Davis v. Ind. Com., Boerstler, et al....	A-16602	Remanded to Ind. Com. for further action (Pending in Supreme Court)
Denver Union Terminal v. Ind. Com. and Saxe	A-12182	Award affirmed (Judgment reversed in Supreme Court)
Dorchak v. Ind. Com., et al.....	A-8974	Pending on remand from Supreme Court
Erickson, et al. v. Ind. Com., et al....	A-15546	Dismissed
Evanoff v. Ind. Com., et al.....	A-11863	Award affirmed (Judgment affirmed in Supreme Court)
Ford Motor Co. v. Bukowich, Ind. Com., et al.....	A-13174	Award set aside (Judgment affirmed in Supreme Court)
Gates Rubber Co. v. Lyle and Ind. Com..	A-13204	Award affirmed
Griffin v. Ind. Com., et al.....	A-12616	Award affirmed (Judgment affirmed in Supreme Court)
Gregorio v. Monroe Coal Co., Ind. Com., et al.....	A-13924	Award affirmed (Judgment affirmed in Supreme Court)
Hallack & Howard Lumber Co., et al. v. Bagly and Ind. Com.....	A-16095	Award affirmed

Title	No.	Judgment of the District Court
Hayden Coal Co. v. Mishmish and Ind. Com.	A-1346	Award set aside (Judgment reversed in Supreme Court)
Hull v. Denver Tramway Co. and Ind. Com.	A-12767	Award affirmed (Motion to dismiss writ of error granted)
Imperial Coal Co., et al. v. Holland and Ind. Com.....	A-13631	Award affirmed (Judgment affirmed in Supreme Court)
Independence Coffee & Spice Co., et al. v. Taylor and Ind. Com.....	A-11472	Award affirmed (Judgment reversed in Supreme Court)
Jewell v. Safeway Stores and Ind. Com..	A-16830	Dismissed
Leyden Lignite Co., et al. v. Buddy and Ind. Com.....	A-14094	Award affirmed (Judgment affirmed in Supreme Court)
Lindner Packing & Prov. Co., et al. v. Ind. Com., Jeanne O'Grady, et al....	A-14727	Award affirmed (Judgment affirmed in Supreme Court)
London Guarantee and Accident Co., et al. v. Ind. Com. and Norris.....	A-13021	Award affirmed
London Guarantee and Accident Co., et al. v. Shireman and Ind. Com.....	A-13129	Award affirmed (Judgment affirmed in Supreme Court)
Long v. Newcomb Realty Co., Ind. Com., et al.....	A-13409	Dismissed
Moffat Coal Co., et al v. Comita and Ind. Com.....	A-12434	Award affirmed (Judgment affirmed in Supreme Court)
Morey Mer. Co., et al. v. Ind. Com. and Flynt	A-10938	Award affirmed (Judgment affirmed in Supreme Court)
Morrow v. Ind. Com., et al.....	A-9919	Award affirmed (Judgment reversed in Supreme Court)
McLaughlin v. Ind. Com., et al.....	A-14648	Award affirmed
McNeil Coal Corp., et al. v. Corcoran and Ind. Com.....	A-16633	Award affirmed
National Lumber & Creosoting Co., et al. v. Kelly and Ind. Com.....	A-15184	Award affirmed (Reversed with directions in the Supreme Court)
Nixon v. Ind. Com., et al.....	A-10839	Award set aside (Judgment reversed in part and affirmed in part in Supreme Court)
Ojo Coal Mines et al. v. Cassai and Ind. Com.....	A-13866	Award affirmed
Platt Rogers, et al. v. Ind. Com. and Elder	A-17017	Pending
Rapsons Coal Mining Co., et al. v. Ind. Com. and Reed.....	A-11925	Award affirmed
Rio Grande Motor Way et al. v. Mersch- man and Ind. Com.....	A-16539	Pending
Rocky Mtn. Fuel Co., et al. v. Capps and Ind. Com.....	A-14512	Award affirmed
Rocky Mtn. Fuel Co., et al. v. Ind. Com. et al.....	A-14496	Pending

Title	No.	Judgment of the District Court
Rocky Mtn. Fuel Co., et al. v. Ind. Com. et al.....	A-14509	Pending
Rocky Mtn. Fuel Co., et al. v. Ind. Com..	A-12479	Award affirmed (Judgment affirmed in Supreme Court)
Rocky Mtn. Fuel Co., et al. v. Ind. Com. and Sheratt.....	A-11202	Award affirmed (Judgment reversed in Supreme Court)
Rocky Mtn. Water Co., et al. v. Ind. Com. and Donnelly.....	A-16740	Award affirmed
Roeder as trustee v. Ind. Com. and Stamas	A-12324	Award affirmed (Judgment affirmed in part and reversed in part in Supreme Court)
Roeder as trustee v. Ind. Com. and Hofman	A-8879	Award affirmed (Judgment affirmed in Supreme Court)
Royal Indemnity Co., et al. v. Ind. Com. and Howell.....	A-15326	Dismissed
Ruby Hill Oil & Gas Co. v. Ind. Com., et al.....	A-13041	Settled and dismissed
Schaefer Realty Co. v. Ind. Com. and Resitta	A-12958	Award set aside (Judgment affirmed in Supreme Court)
Security State Bank of Sterling et al. v. Propst and Ind. Com.....	A-12275	Award affirmed (Judgment affirmed in Supreme Court)
Shastid v. Phillips, Ind. Com., et al....	A-13092	Award affirmed following dismissal of writ of error in Supreme Court
Skaggs Co. v. Nixon and Ind. Com.....	A-17037	Remanded to Ind. Com. for further action
Standard Accident Ins. Co., et al. v. Ind. Com. and Danswill.....	A-10435	Award affirmed
State Comp. Ins. Fund et al. v. Ind. Com., Nirim et al.....	A-14878	Award affirmed (Judgment affirmed in Supreme Court)
State Comp. Ins. Fund et al. v. Hart- man and Ind. Com.....	A-15404	Award affirmed (Judgment affirmed in Supreme Court — Rehearing pending)
Stebbins v. Ind. Com., et al.....	A-16938	Pending
Spurr v. Ind. Com.....	A-17022	Pending
Tranner v. Climax Molybdenum Co., Ind. Com., et al.....	A-12244	Award affirmed (Judgment affirmed in Supreme Court)
Ule v. Ind. Com., et al.....	A-10463	Award set aside (Judgment affirmed in Supreme Court)
United States Fidelity & Guaranty Co., et al. v. Ind. Com. and Clark.....	A-14438	Award affirmed
United States Fidelity & Guaranty Co., et al. v. Ind. Com. and Fleming.....	A-10762	Award affirmed (Judgment reversed in Supreme Court)
United States Fidelity & Guaranty Co., et al. v. Ind. Com. and Lipe.....	A-13497	Award affirmed (Judgment affirmed in Supreme Court)
United States Fidelity & Guaranty Co., et al. v. Ind. Com., Stephan et al....	A-15705	Award affirmed

Title	No.	Judgment of the District Court
United States Fidelity & Guaranty Co., et al. v. Ind. Com. and Yuenger.....	A-11334	Award affirmed (Judgment affirmed in Supreme Court)
Wetz et al. v. Ind. Com., et al.....	A-16247	Award set aside (Pending in Supreme Court)
White et al. v. Ind. Com., et al.....	A-11007	Award set aside (Judgment reversed in Supreme Court)
Wise v. Oliver and Ind. Com.....	A-12658	Award set aside
Wood et al. v. Ind. Com., et al.....	A-16773	Award affirmed
Zelle v. Ind. Com. and Clouse, Jr.....	A-16961	Award affirmed

Eagle County

Evans v. Board of County Comm. of Eagle County, Ind. Com., et al.....	Award set aside (Judgment reversed in Supreme Court)
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El Paso County

Elleman et al. v. Ind. Com., et al.....	20747	Remanded to Ind. Com. for further action
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Huerfano County

Valdez v. Ind. Com., et al.....	Pending
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Las Animas County

Martinez et al. v. Ind. Com., et al.....	Pending
Nucci v. Ind. Com., et al.....	Award affirmed
Radosta v. Skruggs, Ind. Com., et al.....	Award affirmed
Thompson v. Ind. Com., et al.....	Award affirmed

Logan County

Beach v. Ind. Com., et al.....	6466	Award affirmed
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Park County

Rhodes et al. v. Ind. Com. and Henderson	2054	Award affirmed (Judgment affirmed in Supreme Court)
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Pueblo County

Andrews v. Ind. Com., et al.....	24258	Pending
Century Indemnity Co., et al. v. Ind. Com. and Klipfil.....	Award affirmed (Judgment affirmed in Supreme Court)	
McLaughlin v. Busselle, Ind. Com. et al.....	24132	Pending
Nuckolls Packing Co., et al. v. Mohar and Ind. Com.....	Pending	

Routt County

Jones v. Thompson and Ind. Com.....	Pending
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San Miguel County

U. S. Mines of Colorado v. Ind. Com. and Richardson	Pending
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Summit County

Springmeyer v. Ind. Com., et al.....	1714	Award affirmed
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ESCHEAT AND PROBATE CASES IN COUNTY COURTS**Arapahoe County**

Estate of John Goches, deceased.

Money distributed to heirs on petition.

Estate of Barnhart Peterson, deceased.

Pending.

Estate of Mary O'Boyle, deceased.

Suit on bond settled and money paid to State Treasurer.

Chaffee County

Estate of William H. Huffman, deceased.

Pending on sale of real estate.

Estate of William Marshall, deceased.

Pending.

Estate of Lawrence Murphy, deceased.

Pending.

Estate of Steve Stozonich, deceased.

Pending.

Clear Creek County

Estate of Fred W. Bromley, deceased.

Pending.

Estate of Eugene Goguel, deceased.

Pending.

Estate of Charles J. Olson, deceased.

Pending.

Estate of Henry Schluter, deceased.

Pending on petition to withdraw money from Treasury for heirs.

Custer County

Estate of Lew S. Key, deceased.

Estate closed and money paid to State Treasurer.

Denver County

Estate of Andrew Anderson, also known as Carl Hanson, Chas. Borg.

Estate closed and money paid to State Treasurer.

Estate of Josephine Archer, deceased.

Pending.

Estate of Laura Emma Baker, deceased.

Estate closed and money paid to State Treasurer.

Estate of Peter Bezden, deceased.

Estate closed and money paid to State Treasurer.

Estate of Mae G. Brown, deceased.

Estate closed and money paid to State Treasurer.

Estate of William G. Buchanan, deceased.

Pending.

Estate of Edward Campbell, deceased.

Estate closed and money paid to State Treasurer.

Estate of Patrick Creanan, deceased.

Estate closed and money paid to State Treasurer.

Estate of Mary Ann Corr, deceased.

Money distributed to heirs on petition.

Estate of Ed Doran, deceased.

Estate closed and money paid to State Treasurer.

Estate of George Deibel, deceased.

Pending.

Estate of William Edwards, deceased.

Estate closed and money paid to State Treasurer.

Estate of John F. Foster, deceased.

Estate closed and money paid to State Treasurer.

Estate of James V. Goggin, deceased.

Money paid to heirs upon court order.

Estate of Rose Ann Hubbard, deceased.

Money distributed to heirs on petition.

Estate of Mrs. Willie A. Hicks, deceased.

Estate closed and money paid to State Treasurer.

Estate of Henry Johanns, deceased.

Estate closed and money paid to State Treasurer.

Estate of George B. Jones, deceased.

Estate closed and money paid to State Treasurer.

Estate of Samuel B. Kaufman, deceased.

Estate closed and money paid to State Treasurer.

Estate of Joseph Kuesch, deceased.

Money distributed to heirs on petition.

Estate of Kate Manley, deceased.

Money paid to heirs upon court order.

Estate of Harriet Fox MacFadden, deceased.

Money paid to heirs upon court order.

Estate of John Olsen, deceased.

Caveat to will denied.

Estate of John Organ, deceased.

Estate closed and money paid to State Treasurer.

Estate of John C. O'Brien, deceased.

Estate closed and money paid to State Treasurer.

Estate of Edwin S. Pierce, deceased.

Estate closed and money paid to State Treasurer.

Estate of Frank Smith, deceased.

Pending.

Estate of Charles E. Stewart, deceased.

Pending.

Estate of Kayte St. John, deceased.

Estate closed and money paid to State Treasurer.

Estate of Charles Vaillencourt, deceased.

Money paid to heirs on court order.

Estate of Anna Washington, deceased.

Estate closed and money paid to State Treasurer.

Delta County

Estate of Lydia Robinson, deceased.

Pending.

Dolores County

Estate of James Best, deceased.

Estate closed and money paid to State Treasurer.

Estate of Joseph Mund, deceased.

Pending.

Douglas County

Estate of Adam Martz, deceased.

Estate closed and money paid to State Treasurer.

Eagle County

Estate of Fannie C. McCabe.

Estate closed and money paid to State Treasurer.

El Paso County

Estate of Frank Hayes, deceased.

Money distributed to heirs on petition.

Estate of Axel Johnson, deceased.

Estate closed and money paid to State Treasurer.

Estate of Partick Quinlan, deceased.

Estate closed and money paid to State Treasurer.

Estate of Samuel T. Seddon, deceased.

Petition for determination of heirship denied.

Fremont County

Estate of Edward Garland, deceased.

Pending.

Garfield County

Estate of W. E. Goodrich, deceased.

Pending.

Grand County

Estate of Charles Mangelson, deceased.

Estate closed and money paid to State Treasurer.

Gunnison County

Estate of Louis Idzenton, deceased.

Pending.

Jefferson County

Estate of Mary A. Donelson, deceased.

Estate closed and money paid to State Treasurer.

Estate of Francis M. Miller, deceased.

Estate closed and money paid to State Treasurer.

Estate of Charles D. McCann, deceased.

Money paid to heirs on court order.

Kit Carson County

Estate of Edward S. LaRue, deceased.

Estate closed and money paid to State Treasurer.

Lake County

Estate of O. O. Swanson, deceased.

Pending.

Estate of David Matthies, deceased.

Pending.

Las Animas County

Estate of Paul Mayer, deceased.

Estate closed and money paid to State Treasurer.

Logan County

Estate of Chauncey C. Chapin, deceased.

Estate closed and money paid to State Treasurer.

Estate of Margaret R. O'Brien, deceased.
Pending.

Estate of Joseph Wilson, Sr., deceased.
Partial payment made to State Treasurer.
Balance pending on sale of real estate.

Mesa County

Estate of Charles E. Doxey, deceased.
Estate closed and money paid to State Treasurer.

Estate of Frank Johnson, deceased.
Estate closed and money paid to State Treasurer.

Estate of William Murr, deceased.
Estate closed and money paid to State Treasurer.

Morgan County

Estate of Walter E. Rogers, deceased.
Pending.

Estate of Frank Smrcka, deceased.
Pending.

Otero County

Estate of Samuel Andrews, deceased.
Money paid to heir upon court order.

Estate of Jacob Beuner, deceased.
Estate closed and money paid to State Treasurer.

Estate of Hattie G. Miller, deceased.
Estate closed and money paid to State Treasurer.

Park County

Estate of James E. Kehoe, deceased.
Pending.

Powers County

Estate of Nellie E. George, deceased.
Estate closed and money paid to State Treasurer.

Pueblo County

Estate of Agnes M. Hicks, deceased.
Pending.

Rio Grande County

Estate of Luther Oliver, deceased.
Pending.

Saguache County

Estate of Sarah Miller, deceased.

Estate closed and money paid to State Treasurer.

Estate of Thomas H. Thompson, deceased.

Pending.

San Miguel County

Estate of Fred Beebe, deceased.

Pending.

Estate of Andrew Bivens, deceased.

Pending.

Summit County

Estate of Daniel Wesley Fall, deceased.

Pending.

Teller County

Estate of Andrew Olson, deceased.

Pending.

Washington County

Estate of Eugene Purdy, deceased.

Estate closed and money paid to State Treasurer.

Weld County

Estate of Harrison J. Black, deceased.

Partial payment made to State Treasurer.

Balance to be paid on sale of stock.

Estate of Charles E. Carlson, deceased.

Pending.

Estate of Etta M. Robinson, deceased.

Estate closed and money paid to State Treasurer.

SCHEDULE III

OPINIONS AND SYLLABI OF
OPINIONS

RENDERED DURING THE BIENNIAL PERIOD

1935-1936

Note: These syllabi and opinions are reported in the chronological order of the dates on which the opinions were rendered. A copy of each opinion is on file under a number corresponding with that of the syllabus.

Opinions and Syllabi of Opinions

1 **INSURANCE**

Colorado Insurance Department, December 18, 1934.

Term of life of Mutual Co.

A corporation not for profit, bringing itself under Mutual Insurance Act of 1921, became a body corporate as of 1921, despite the fact that change was effected by so-called "Certificate of Amendment."

Corporate life limited to 20 years by general law being then in effect.

2 **STATE HIGHWAY FUNDS**

To B. F. Stapleton, December 28, 1934.

Distribution of Highway Special Fund.

The distribution of the State Highway Department's Special Fund to the State Highway Fund to pay items properly chargeable against the Special Fund, is just a matter of book-keeping convenience and may be adjusted by the State Auditor at any time when monthly distributions of motor fuel taxes are made under the Act of 1933.

3 **MONEY LENDERS' ACT**

To Grant McFerson, December 29, 1934.

The Act of 1913 is now in effect.

The Money Lenders' Act of 1919 purported to repeal the Act of 1913, but since the Supreme Court has recently declared the 1919 Act unconstitutional the Act of 1913 is in full force and effect. It is the duty of the Bank Commissioner to issue licenses, collect and receive fees and report violations of the Act to the proper district attorneys, in accordance with the provisions of the act.

4 **FEES AND SALARIES**

To B. F. Stapleton, December 31, 1934.

Payment of salary vouchers.

The law was actually passed on November 6th; when voted upon by the electors of the State, there could have been no reasonable doubt as to its becoming effective. The Treasurer was justified in employing clerical assistance to get his office ready to put the law into operation, and the State Auditor may properly approve the vouchers for payment.

5

NEWSPAPERS

To Ellison Hatfield, January 2, 1935.

General circulation in the county.

Paper printed in one county can be "published" and have general circulation in another. In re: McDonald, 187 Calif. 158; 201 Pacific, 111; Connerly v. Stephenson, 181 Ark. 833; 28 S. W. 2nd 60.

6

TAXATION

To Silmon Smith, January 3, 1935.

Distrain of personal property.

Personal property may be distrained for personal property taxes, even after the owner's real estate has been bid in by the county for an amount representing the tax on both real and personal property. (Sec. 7371, 7375, 7402 C. L. 1921; 18 Colo. App. 85, 8 Colo. App. 359, 74 Colo. 129, 87 Colo. 193.)

7

ARCHITECTS

To Frank W. Frewen, January 8, 1935.

Licensing of.

"Shall" is to be given a mandatory meaning in construing Sec. 4689, C. L. '21, and the Board of Architects Examiners is compelled to grant certificates where the applicant is a member of the American Institute of Architects.

City of Colo. Springs v. Street, 81 Colo., 181, 184.

8

ENGINEERS

To W. T. Blight, January 9, 1935.

Practice without a license.

Firm may advertise as engineering company if it does not attempt to practice except under supervision of a consulting engineer. (Sec. 4708, 4709 C. L. 1921 amended S. L. 1927 p. 335.)

9

LIQUOR LAW

To Chas. M. Armstrong, January 19, 1935.

Distiller's license.

Under Ch. 12, Ex. S. L. 1933, a manufacturer, rectifier or distiller of spiritous liquors in Colorado may sell directly to retailers in the State without a wholesaler's license. His distiller's license covers such sales.

10

CIVIL SERVICE

To. H. C. Getty, January 22, 1935.

Removal of Provisional Appointee.

A provisional appointee under civil service may not be removed by the head of a department without the approval of the Civil Service Commission.

State C. S. Comm. v. Cummings, 83 Colo., 379.

11

PHARMACY BOARD

To H. F. Bedford, January 24, 1935.

Right of Secretary to additional compensation.

The Administrative Code of 1933 did not expressly or impliedly repeal Sec. 4583, C. L. 1921 as amended, which provides salaries of the members and secretary of the Pharmacy Board; and as Sec. 2, Art. 7 of the Administrative Code expressly provides for the continuance of said Board as then organized and existing under Sec. 4583, the secretary is entitled to receive compensation as a member and also as secretary of said Board.

12

TAX DEEDS

To C. S. Ickes, January 25, 1935.

County not permitted to take tax deed.

Under the provisions of Sec. 7422, C. L. '21, as amended by Ch. 152, S. L. '27, a county may bid in land sold for delinquent taxes, but is not permitted to take a tax deed for such land. (But see Ch. 217, S. L. 1935.)

13

MOTOR VEHICLE TAX LAW

To G. F. Wilson, February 5, 1935.

Duties of Excise Tax Commissioner.

Under the Administrative Code the active administration of the Motor Vehicle Tax Law and of the Uniform Motor Vehicle Code is the duty of the Excise Tax Commissioner, under the general supervision of the State Treasurer.

14

GENERAL ASSEMBLY

To Ray H. Talbot, February 5, 1935.

Right of Lt. Gov. to vote.

It is not only the right, but it is the duty of the Lieutenant Governor to cast his vote when the Senate is equally divided upon any question which is properly before it (C. J. No. 59, page 115).

Rouse v. Johnson, 234 Ky., 473, 479.

15

FEES AND SALARIES

To Chas. H. Beeler, February 13, 1935.

Increasing deputy county treasurer's salary.

Under Sec. 7940, C. L. '21, which provides for the appointment of a deputy by the county treasurer and that his compensation and term of office shall be fixed by the treasurer with the approval of the county board, a salary once fixed by the treasurer and approved by the board cannot be changed by either without the approval of the other (*Watson v. Commissioners*, 80 Colo., 14; *Commissioners v. Morning*, 72 Colo., 200). The approval of the board is indispensable and the treasurer could not pay a larger salary than that which the commissioners have approved.

16

TAXATION

To Walter H. Smythe, January 28, 1935.

Rural Rehabilitation Corporation property

Property acquired by the Rural Rehabilitation Corporation or its subsidiaries, is not subject to general taxation.

17

UNFAIR COMPETITION

To C. C. Mims, February 4, 1935.

Grocery stores.

State laws concerning unfair competition are not suspended or superseded by Ch. 1, 1st Ex. S. L. '33, except insofar as they are inconsistent with the provisions of the National Industrial Recovery Code. (Ch. 187 S. L. 1933.)

18

TAX SALES

To T. W. Poulson, February 5, 1935.

Redemption of non-contiguous tracts.

Non-contiguous tracts of land included in a single tax sale certificate, may be redeemed separately only if the tracts in question were sold separately and then included in a single certificate at the request of the purchaser, pursuant to Sec. 7419 C. L. '21. If sold together sale is void. (33 Colo. 475.)

19

APPROPRIATIONS—Continuing

To H. F. Bedford, February 13, 1935.

State Examiners.

The law does not provide a continuing appropriation for the compensation of the State Examiner or Assistant Public Examiner. (Sec. 314 C. L. 1921; 55 Colo. 589.)

20

MOTOR VEHICLES

To Walter P. Powell, February 19, 1935.

Disposition of counties' share of license and fuel taxes.

The counties should place their share of the State Motor Vehicle Tax and the Motor Fuel Tax in a separate fund, as ordered by the State Treasurer.

The counties' share of Motor Fuel Tax and Motor Vehicle license fee may be used to buy or repair machinery or buy gasoline but there is some doubt if it can be used to buy rights of way. (Amdt. No. 5 passed Nov. 6, 1934, Ch. 93 S. L. 1935.)

21

CHAIN STORE TAX

To James W. Creamer, February 26, 1935.

Test as to what is "Chain."

Two or more units are taxable as a chain when following situations exist:

1. Identical general manager or management or boards of directors.
2. Identical supervision as shown by having the same man act as president, or the same group of men occupy the governing offices.
3. Identical ownership or control as shown by ownership of 51% or more of the stock by the same person or group of persons.

22

SALES TAX

To Chas. M. Armstrong, February 26, 1935.

Commodities paying Federal Processing tax.

The Federal processing tax is not an excise tax within the meaning of section 6 of our Colorado Sales Tax Law, and hence sales of commodities subject to the processing tax are subject to the sales tax.

23

SALES TAX

To Major R. O. Baird, February 27, 1935.

Purchases with relief money.

Sales of articles covered by direct relief orders are not subject to sales tax.

Sales of articles purchased with money paid as wages for work relief are taxable and tax must be paid by the purchaser.

24

SALES TAX

To G. D. Blount, February 27, 1935.

Materials for State projects.

Sales of materials to be used in construction of State highways are not subject to sales tax. (Ch. 189, S. L. 1935.)

25

INSURANCE

To Jackson Cochrane, dated October 4, '34, issued March 3, '35.

Reinsurance—Mutual company.

Mutual Life Insurance companies can not transfer a *part* of risks to another company. Section 2537 (2) C. L. '21 construed to require a transfer of all or none of risk.

Citing Bolles v. Mut. Res. Fund Life Ins. Co. 220 Ill. 400;
Federal Life Ins. Co. v. Kerr, 173 Ind. 613. (Contra
100 N. W. 39. 45 Atl. 762.)

26

TAXATION

To Colorado Tax Commission, March 4, 1935.

Assessment of automobiles sold prior to April 1 but delivered after.

Ownership of automobiles is vested in the purchaser at the time the bill of sale is issued to him. In order for him to escape the sales tax, the sale must have been completed prior to March 1, 1935, so if title to a car is passed then, to escape payment of sales tax, the car is assessable to purchaser on April 1, although delivery is not made until later. (Sec. 7193, 7180 C. L. 1921.) See opinion No. 28.

27

SALES TAX LAW

March 4, 1935.

Hendrie & Bolthoff Manufacturing Co.,
1635 - 17th Street,
Denver, Colorado.

Attention Mr. H. V. Waterman, President.

General construction of Statute.

Gentlemen:

I am sorry that I have been unable to give you a written confirmation of some of the matters which we discussed at the meeting of the Rocky Mountain Distributors' Association on last Wednesday evening, particularly with reference to your letter of February 25, addressed to Mr. William C. Prescott, Director of the Sales Tax Division.

In taking up the matters in your letter to Mr. Prescott, it may be that statements made herein will not be entirely consistent with oral statements made on Wednesday night, but in the main, I believe you can rely on the following answers:

INTERSTATE SALES

(Section 10)

As a general rule, you will be safe in relying upon the proposition that when merchandise is contracted for in this State, and no further assent is necessary from an out-of-state authority, and the goods are delivered in Colorado, that it is then an intrastate sale and is subject to the tax. On the other hand, if the sale is made subject to an out-of-state confirmation, ordinarily the sale is in interstate commerce and is not taxable.

DELIVERY CHARGES

(Section 12)

When property is sold f. o. b. Denver, subject to freight equalization with other points, the freight charge is not taxable if segregated and so reported.

SALES TO CONTRACTORS

(Section 21-b)

Ordinarily any sales to contractors, under the ruling of the Supreme Court of the State of Illinois in their decision of December 20, 1934, and which we have adopted, are not taxable. This is to the effect that the contractor is buying for purposes of resale and he is charged with the duty of passing the tax on to the ultimate consumer, which, in the Illinois case was construed to be the house owner. In other words, the contractor must pay the tax.

EXEMPTION CERTIFICATES

These certificates, I believe, are at this writing available at the office of the State Treasurer.

For the present you may assume that all sales to contractors engaged in jobs for the Federal government, the State, or any of its political subdivisions are not subject to the tax.

Transformers and meters used by electrical power companies are, in our opinion, taxable under the Act under the theory that here the electrical company is the ultimate consumer and they are not bought for purposes of resale, and are not part of the processing or manufacturing in the manufacture of the product for resale.

Drill steel, under paragraph 3, of Section 11, page 4 of the Rules and Regulations, is taxable on the theory that it is tangible personal property used or consumed, but does not enter into the actual processing of the material ultimately produced.

Under the next to the last paragraph of Section 11, carbide used for lighting purposes in a mine is not taxable. To say that drill steel is taxable in the preceding paragraph, but that powder, fuse and caps for use in coal and metal mining or quarry operations are not taxable may be making a distinction without a difference. Certainly, there is no very good reason for such discrimination.

EXEMPT SALES

(Section 7)

Regarding sales "in their governmental capacity only"; for the present, I believe you are safe in relying upon the general proposition that on all sales to the Federal government, the State, and its political subdivisions, and to contractors engaged in construction of same, there will be no tax. However, one exception occurs to me, that where State institutions are operating cafeterias, book stores, and things of that general nature engaged in competition with private individuals, the tax should be collected.

You will recall that there was a great deal of discussion about the discrimination caused by application of the Interstate Commerce clause in much of your business. As I told you, I have been informed that there is pending in Congress a bill known as the "Robbins Act" which has for its purpose the correction of the discrimination caused by the Interstate Commerce clause in states having a Sales Tax. I have wired to Congressman Lewis for a copy of this Act to find out what its provisions are and the possibility of its passage, and upon receipt of this information, I shall be glad to advise you further on this very important question.

Hoping that this general statement may be of some assistance to you, and thanking you for the opportunity of meeting with your organization and assuring you of our continued cooperation, I am

Very truly yours,

PAUL P. PROSSER,
Attorney General.
NORRIS C. BAKKE,
Deputy Attorney General.

28**TAXATION**

To Mr. A. W. Sparkman, March 9, 1935.

Assessment of automobiles sold prior to April 1.

If cars ordered before March 1st are not in this State April 1st, no property tax will be assessable on them; if they are in possession of the purchasers in this State on April 1st, the purchasers will be obliged to pay the tax.

29**CIVIL SERVICE**

To H. C. Getty, March 12, 1935.

Appointment after expiration of 2-year list.

Under Art. 5, subparagraph (3) of the Published rules of the Civil Service Commission, a vacancy occurring after the expiration of the two-year list of eligibles (extended by the Commission for a 3rd year) may be filled by the person at the head of such list before third year expires.

30 BEER LICENSE FEES

To C. C. Woolridge, March 12, 1935.

Disposition.

The Old Age Pension Fund gets all of the license fees for the sale of 3.2 beer and 60% of the license fees for the sale of liquor.

31 INSANE PERSONS

To C. C. Hough, March 13, 1935.

Members of CCC Camps.

County Attorney of the county in which the insane person is a legal resident is charged with the duty of instituting commitment proceedings in the county court. The legal residence of a person is not changed or affected by residence at CCC camp. (Sec. 551, 558 C. L. 1921.)

32 SALES TAX

To James D. Parriott, March 14, 1936.

Cities.

Not liable to pay tax when acting in governmental capacity.

33 INSURANCE

To Jackson Cochrane, March 15, 1935.

Insurance of minors.

Sec. 2512, C. L. 1921, as amended, prohibiting the writing of insurance on children under the age of ten years, except upon application of natural parents, is not repealed or modified by Ch. 51, Sec. 5, S. L. 1931, relating to adoption.

The repeal of a statute by implication is not favored.

People v. Chaffee County, 86 Colo., 249.

34 CORPORATIONS

To J. Von Tobel, March 19, 1935.

Financial information in annual reports of.

Construing Ch. 71, Sec. 1, sub-sections 7, 8 and 9, S. L. 1931, regarding detail of financial information to be set forth in annual corporation reports.

Citing: Bergen v. Valentine Co., 88 Colo. 52.

Beeler v. Oil Co., 85 Colo. 50.

Moody v. Rhodes, 61 Colo. 368.

Deer Trail Co. v. Cummins, 80 Colo. 368.

35

CHAIN STORE TAX

To A. A. McVittie, March 18, 1935.

The provisions of the Act shall apply to every person or corporation, etc., controlled or held with others by majority stock ownership or directed by one management or association of ultimate management. Application must be made to operate each store, but may be listed on one application blank.

36

STATE AUDITOR

To Irvin E. Jones, March 18, 1935.

May require County to set up separate road fund.

Under Sections 312 and 313, C. L. 1921, the Auditor of State clearly has the authority to require the county commissioners and the county treasurers of the various counties to set up a special road fund to handle allocations of the State Gasoline Tax to the counties.

37

CITIES AND TOWNS

To John G. Abbott, March 18, 1935.

When Mayor may vote on ordinance.

Under sections 9062, 9167 and 9168, C. L. 1921, the law does not permit the Mayor to vote in case of a tie upon an ordinance or resolution making an appropriation or authorizing an expenditure of money. (43 C. J. 507.) When contracts must be let to lowest bidder. (Sec. 8987, 9020 C. L. 1921.)

38

SALES TAX

To H. L. Prather, March 25, 1935.

Auctions.

Auction sales in Colorado are subject to the sales tax, and where the name of the owner is disclosed such owner must pay the tax.

39

COUNTY COMMISSIONERS

To A. E. Aldrich, March 15, 1935.

As County Board of Health.

Under Sec. 893, C. L. 1921, the County Board of Health shall appoint a qualified physician as health officer of the county. However, we are of the opinion that for the county commissioners to appoint one of their own members as county health officer, would be contrary to public policy.

40

CIVIL SERVICE COMMISSION

To State Civil Service Comm., March 25, 1935.

Power to provide for expenses.

Sec. 33 of Art. V of the Constitution provides that "no money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof."

The amended section 13 of Art. XII fails to say that the Civil Service Commission may expend money for expenses without a prior appropriation to cover the same. Therefore the Commission would not be authorized to call upon the State Treasury for expense money in the absence of funds remaining in an appropriation made for that purpose.

41

BUILDING AND LOAN CODE

To J. R. McClelland, March 29, 1935.

Constitutionality of Code.

Sec. 13, Art. IX, Ch. 47, B. & L. Code of 1933, is not unconstitutional on ground that it impairs the obligations of contracts entered into prior to 1933. Dividends are only payable out of earnings, even in the absence of statute.

42

SALES TAX

To Wm. C. Prescott, March 28, 1935.

Fund stolen.

The retailer is liable to the Sales Tax Department for the full amount of tax collected each month, and if all or part of it is stolen he must make the loss good.

43

FEES AND SALARIES

To H. F. Bedford, March 30, 1935.

Investigator part time for two boards.

An arrangement between the State Board of Pharmacy and the State Medical Board to jointly employ a part-time investigator, who shall serve one board one month, and the other board the next, receiving his monthly salary from the board for which he has worked, would not be in violation of the Administrative Code (Sec. 7, Art. 1, relating to salaries).

44

INCOME TAX LAW (H. B. 487)

To Gov. Johnson, March 30, 1935.

Constitutionality.

The Bill is unconstitutional because:

1. The tax proposed to be laid is not a tax upon the enjoyment of a privilege, but is a tax upon the exercise of a natural right.

2. Income is property and the tax proposed to be laid on incomes is a direct tax upon property.

3. The proposed law is contrary to the provisions of the Colorado Constitution which requires that all taxes must be uniform upon the same classes of property. (Sec. 3, Art. X.)

45**SALES TAX LAW**

To Erl H. Ellis, April 3, 1935.

Sales by jobbers—Rules and regulations.

The following regulation meets with the approval of the State Treasurer and the Director of the Sales Tax Department:

“The Colorado Sales Tax will not apply to receipts from a sale, if the sale is based upon an order which prescribes that specifically designated goods shall be shipped by a third party from an out-of-state point direct to the purchaser in Colorado, and the sale is actually made in accordance with such order; provided, that the goods sold shall not be of a kind and amount customarily carried in stock by Colorado concerns.”

46**COAL MINING**

To Thos. Allen, April 4, 1935.

Annual license fees.

Inasmuch as the Act contains no provision for prorating or reducing the license fee for the current year (1935) the full amount of the fee as fixed by the Act must be paid.

47**SCHOOL OF MINES**

To M. F. Coolbaugh, April 5, 1935.

Faculty personnel—Effect of Code on employment.

The whole purpose and intent of the Administrative Code in its applicability to our State Institutions is that the Executive Council shall exert only general supervision over the duties and functions of the boards of such institutions. Board of Trustees still hire faculty.

48**TAXATION**

To Rudolph Kubal, April 5, 1935.

Payment of back taxes on motor vehicle.

Under House Bill No. 531, a penalty is imposed upon any one who obtains a license without paying all taxes assessed against the recently purchased vehicle. Taxes are perpetual lien on personal property until paid. (Sec. 7375 C. L. 1921.)

49

INSURANCE

To Jackson Cochrane, April 5, 1935.

Service of process on foreign insurance companies by serving Insurance Commissioner.

The Commissioner is not concerned with question of validity of service of process so long as same is done in accordance with Sec. 2491, C. L. 1921.

Federal Government agency must pay the usual \$2 service fee, as such charge is made to defray expense to which the department is put.

50

MOTOR VEHICLE LAW

To Chas. M. Armstrong, April 5, 1935.

Re: H. B. No. 532.

1. H. B. 532 does not affect interstate traffic, except that it requires owners of trucks, busses, etc., who are or become residents of Colorado to buy licenses in the county in which they reside.

2. It does not change the present law regarding residents of foreign states who travel through Colorado without establishing a residence in Colorado.

3. The purpose of the act is to require all Colorado residents to buy their motor vehicle licenses in the county in which they reside.

4. It does not affect the power of the Motor Vehicle Department to make reciprocal agreements with other states under Ch. 130, S. L. '33 nor to make agreements concerning both trucks and trailers owned by non-residents.

5. Sec. 1 of the act refers to motor vehicles owned by persons who are residents of Colorado, which is made clear by the requirement that persons driving cars with foreign licenses must within 30 days obtain a Colorado license in the county "in this State where said owner resides."

51

TAX CERTIFICATES

To R. D. McLeod, April 5, 1935.

Assignment of.

Under S. B. 433, the county board has been given much broader powers in regard to the assignment of tax certificates, but the law works in the same way as the old (Sec. 7422, C. L. '21) in that the county treasurer should sign the assignment acting under a resolution by the county board.

52

TAXES

To Mr. L. H. Hauter, April 6, 1935.

Certificates held by county.

County could not issue deeds on taxes certificates held by it although U. S. Government had option on certificates. If law passes permitting county to take tax deeds, situation will be different.

53

SCHOOLS

To Olga A. Hellbeck, April 6, 1935.

There is no legal disability in a school teacher becoming a candidate for the office of school director, but if such teacher should be elected he would then be incapable of discharging the duties of both offices, and he would be compelled to make a choice between the two (12 L. R. A. 125).

54

MOTOR VEHICLES

To Chas. H. Gunn, April 11, 1935.

Payment of taxes on motor vehicles before obtaining license.

Although county assessors under this act must begin immediately to list automobiles separately, which separate list is to be turned over to the county treasurer January 1, 1936, yet this law cannot be carried into full effect as to county clerks until January 1, 1936, for the reason that until that date, the county treasurer will not have in his possession a separate list of automobiles, so that he can furnish to the county clerk a receipt for taxes levied upon a specific motor vehicle.

55

TOLL ROADS

To Edward D. Foster, April 11, 1935.

Built through Federal loan.

A county may establish and maintain a toll road to be built with Federal Funds to be repaid from receipts of the road.

65 C. J. 1127.

Ch. 16, 1 Ex. Sess., '33, as amended by S. B. 275, approved February 18, 1935.

Hoyt et al. v. Trustees, decided by Sup. Ct., 4/8/35.

56

COAL MINE INSPECTION

To C. M. Armstrong, April 11, 1935.

Under H. B. 331, which is amendatory of previous statutes relative to coal mine inspection laws, the State Treasurer is the proper licensing officer and may issue licenses subject to the approval of the Coal Mine Inspector.

The Coal Mine Inspection Department should have the custody of all books and records relative to inspection; the State Treasurer should retain custody of license fees and make proper accounting therefor.

57

HIGHWAY DEPARTMENT

To C. D. Vail, April 11, 1935.

Contracts of.

House Bill 188 of the 30th Gen. Assembly, amending the Com-

piled Laws of 1921 (Sec. 1391) in no way changes the method of executing ordinary contracts between the Highway Department and the U. S. Government, as provided for in Sec. 1398, C. L. 1921, but refers only to highway anticipation warrants.

58 MOTOR VEHICLES

To Chas. M. Armstrong, April 12, 1935.

Registration of titles.

The county clerk may require an affidavit from the mortgagee of a motor vehicle which he desires registered in his own name after he has foreclosed a mortgage lien. Foreclosure of chattel mortgages discussed.

59 STATE ENGINEER

To M. C. Hinderlider, April 12 1935.

Records of Irrigation companies.

It does not appear that under Sec. 1731, C. L. '21, it is within the province or authority of the State Engineer to order or direct irrigation companies to give access to their records on demand of a user of water.

60 INHERITANCE TAX LAW

To G. Hetherington, April 15, 1935.

Taxability of partnership interest.

Under the Uniform Partnership Law a partnership interest is personal property (S. L. '31, Ch. 129, Sec. 26) and upon the death of a partner his right in specific property vests in the surviving partner (S. L. '31, Ch. 129, Sec. 26). It therefore follows that the partnership interest of a resident of Colorado in a partnership existing in a foreign state is taxable under the Colorado Inheritance Tax Law in Colorado, but not in the foreign state.

61 SALES TAX

To Grant, Ellis, Shafroth & Toll, April 15, 1935.

Leases under Sales Tax.

Lease of Neon signs and tubing for advertising purposes are taxable.

62 STATE LAND BOARD

To Land Board, April 15, 1935.

H. B. 792 concerning insurance of State buildings has no application to improved farm lands held by the State School Fund.

63

FEES AND SALARIES

To Homer F. Bedford, April 16 1935.

Increase of salary.

The reinstatement of salaries reduced under Ch. 181, S. L. '33, during the biennial period ending June 30, 1935, would be unlawful.

64

CHIROPRACTIC BOARD

To Dr. C. C. Harrod, April 17, 1935.

Adoption of rules.

A rule requiring licentiates to take a post graduate or review course probably could not be enforced.

65

SALES TAX

To H. F. Bedford, April 17, 1935.

Payment of expenses incident to creation of Sales Tax Department.

In order to reimburse the General Fund for the expenses advanced for the necessary creation of the Sales Tax Department under H. B. 984, it would be within the province of the State Treasurer to anticipate the total amount of revenue available under the Act during its life, divide that amount by 26 (the number of months the law still has to run) and apply 5% of the average result to the payment of such expense.

Whatever amount is finally determined upon for monthly expenses should be approved by the Executive Council.

66

SALES TAX

To Mr. W. E. Riter, April 18, 1935.

Poisoned bait sold by U. S. Dept. of Agriculture.

Not subject to sales tax as sales are occasional and in nature of a service.

67

FEES AND SALARIES

To Chas. O. Mosher, April 18, 1935.

Increase of egg license fee during year.

1. A license fee may be increased or decreased at any time in the discretion of the body imposing it (37 C. J., Sec. 40, p. 189); and persons engaged in the business during the present calendar year who failed to procure a license prior to the effective date of the Act (March 16, '35) must pay the increased fee.

2. It is the duty of any person who is required by the terms of the Act to be licensed, to make application, accompanied by the proper fee and to obtain such license.

68

“CIVIL ACTIONS”

To W. H. Hammond, April 19, 1935.

Tax on filing of civil actions.

The term “civil actions” as used in H. B. 789, imposing a tax for the annotation of the Colorado Laws, includes statutory proceedings such as appeals from justice courts, divorce cases, forcible entry and detainer, eminent domain, partition and mechanics’ lien cases.

69

DENTAL EXAMINERS

To Dr. N. C. Gunter, April 20, 1935.

Annual Registration fee.

Under Ch. 88, S. L. '29 failure to pay the required fee when due shall automatically suspend the right of any licentiate to practice dentistry; and, further, if such delinquency continues for three consecutive years, it shall be the duty of the board without notice, or hearing to cancel the delinquent’s license, subject to reinstatement.

70

CHAIN STORE TAX

To James W. Creamer, April 22, 1935.

Re: Vending machines.

Under the definition of the term “store” in the Act, it is used in its usual and ordinary sense, and it is probable that the legislature did not intend to include vending machines within the provisions of the Colorado Store License Law.

71

COAL MINE INSPECTION

To Thos. Allen, April 22, 1935.

Maps by licensed engineer.

The Coal Mine Inspection Department may require all maps used in the work of the department to bear the stamp of a licensed engineer, unless exempted by Sec. 4707 of the Engineering Act. (S. L. 1927.)

72

FEES AND SALARIES

To G. Hetherington, April 23, 1935.

Continuing Appropriations.

Salaries of the Inheritance Tax Commissioner, his deputies and the appraisers authorized to be appointed are continuing appropriations and may be paid in full from the effective date of the new act—approved on April 11th, 1935.

73

FEES AND SALARIES

To Executive Council, April 25, 1935.

Director of Markets Division salaries.

Salaries not having been fixed by legislature can be fixed by head of department subject to approval of Executive Council. (Adm. Code, Sec. 7.)

74

SALES TAX

To W. F. Denious, April 25, '35.

Exemption of items used in processing.

Classification of the items used by Gates Rubber Co., listed by the Sales Tax Division as non-taxable, is reasonable and shows no abuse of discretion, and would probably be sustained by the courts.

All other items of personal property bought and used by the Gates Rubber Co. are subject to the sales tax.

75

SALES TAX

To S. A. Henry, April 25, 1935.

School cafeterias.

Sales of food in school cafeterias, limited to pupils, teachers and employes of the school (and not served to the public), should not be taxed.

76

SALES TAX LAW

To Frank L. Shaw, April 26, 1935.

Sales by an Administrator.

If the tangible personal property being sold would have been subject to the tax if sold by the deceased during his lifetime, the sales by the administrator, even though made under order of court, are subject to the tax.

77

SALES TAX LAW

To Robt. S. Crites, April 26, 1935.

Distributions by Rural Rehabilitation Corp.

To enforce collection of the sales tax on tangible personal property distributed to relief clients by the Bureau of Rural Rehabilitation would impose an unwarranted and unjustified hardship upon an instrumentality of the U. S. Government.

78

SALES TAX

To W. W. Cooper, April 26, 1935.

Exemption of religious and charitable institutions.

An organization which is not required to pay general property taxes, because of its religious or charitable character, is not subject to the sales tax.

79

MONEY LENDERS' ACT

To Grant McFerson, April 27, 1935.

Additional licenses.

Under House Bill 99, (effective April 11, 1935), not more than one place of business shall be maintained under the same license, but the licensing official shall issue more than one license to a licensee upon the payment of an additional license fee and the filing of an additional bond.

80

MOTOR VEHICLES

To Sec'y of State, Washington, D. C., May 2, 1935.

Reciprocal privileges with foreign countries.

Under Sec. 36 of Ch. 122, S. L. 1931, any non-resident owner of an automobile which has been duly registered in the place of the owner's residence and which at all times when operated in Colorado, displays upon it the number plate or plates issued for such vehicle in the place of the owner's residence, may operate or permit the operation of such vehicle within this State for an indefinite time (but not for hire or compensation) without registering such vehicle or paying any fees to the State.

81

MONEY LENDERS' ACT

To Grant McFerson, May 3, 1935.

Foreign Corporations.

A foreign corporation authorized to do business in Colorado may qualify as a money lender under the provisions of House Bill No. 99 of the 30th G. A., approved April 11, 1935.

Citing 14 A Corpus Juris, Sec. 3946, Page 1241.

82

HIGHWAY SIGNS AND MARKERS

To Roy Best, May 3, 1935.

Manufacture of, by Penitentiary.

Money for the purchase of supplies and equipment for the manufacture of license plates, road signs, markers and to repair the same is available from the Motor Vehicle License Fund.—Sec. 4 of Ch. 135, S. L. 1933.

83

ARBITRATION

To R. G. Parvin, May 6, 1935.

Game and Fish.

A parole agreement of arbitration is a good common law agreement and such an award may be made the basis of a civil action for damages.

Lilley v. Tuttle, 52 Colo. 125.

84

DAIRY CODE

To Gov. Johnson, May 7, 1935.

Counter ice cream freezers.

Counter ice cream freezers may be licensed under section 9 of the Colorado Dairy Code.

85

INSURANCE

To Jackson Cochrane, May 8, 1935.

Fraternal Benefit Society.

The Brotherhood of Railroad Trainmen operating under a lodge plan and getting health and death benefits is exempt from the insurance laws governing fraternal benefit societies by virtue of Sec. 2629, C. L. '21.

The Insurance Commissioner is not an agent for service of process upon such an organization.

86

INTERSTATE COMPACTS

To Gov. Johnson, May 9, 1935.

Ratification by General Assembly.

A Joint Resolution does not meet the constitutional requirements for ratification of interstate compacts. (Citing many cases and compacts.)

87

BEER AND LIQUOR LICENSE FEES

To Warren B. Hale, May 14, 1935.

Old Age Pensions.

License fees collected by the State under H. B. 192 go into the Old Age Pension Fund.

License fees collected by counties or municipalities are to be credited to the general fund of the county or municipality in which collected.

Licenses collected under H. B. 953, (the beer law) by the state are payable to the Old Age Pension Fund through distribution by the State Treasurer under Sec. 10 of this new beer law.

88

ACCOUNTANCY BOARD

To Arthur L. Baldwin, May 16, 1935.

An individual may operate a business or trade under a firm name. Such individual could practice as a public accountant under a firm name and as a certified public accountant under his own name. The Accountancy Act empowers board to make rules and regulations to govern examinations of applicants and issuance of certificates, but not to regulate the practice in other respects by rules and regulations.

89

BOARD OF HEALTH

To Dr. E. L. Cleere, May 16, 1935.

Barbers and Cosmetologists.

An administrative board is already designated by law to supervise the practice of barbering and cosmetology, respectively, in this State, and to the extent that each of these boards is authorized by law to regulate the practice of the profession under its jurisdiction, no other administrative board may usurp or take upon itself the functions of such boards.

90

LIQUOR

To James H. Carr, May 17, 1935.

Restaurants and hotels owned by same person are limited to one license.

91

LIQUOR

To James H. Carr, May 22, 1935.

Rebates of fees.

1. Credit shall be given for the unexpired portion of any existing state license and may be applied on new license issued under the new law.

2. The holder of a state license issued under the 3.2% beer act prior to the 1935 amendment may continue to operate thereunder until the expiration of his license by filing bond required by paragraphs 1 and 2 of Sec. 5, and 9a of the 1935 act. Such licensee would not be entitled to a rebate for any unexpired portion of his old license.

3. A person licensed as a wholesale dealer of medicinal liquor under the act amended by H. B. 192 should be credited for the unexpired portion on a wholesale dealer's license issued pursuant to H. B. 192.

92

ALCOHOL

To Maurice Leckenby, May 22, 1935.

Sale by liquor licenses.

Licensees under H. B. 192 may sell alcohol of less than 190 proof for beverage purposes.

93

INSURANCE

To Jackson Cochrane, May 22, 1935.

Sportsman's Mutual Insurance Co.

Certificate of incorporation submitted by foreign mutual insurance company applying for admission to Colorado, containing provision that "private property of the members shall not be subject to the payment of corporate debts" must be rejected. (Sec. 2566 C. L. 1921.)

TAXATION

Disposition of tax certificates under H. B. 200.

May 23, 1935.

Mr. John R. Seaman,
Colorado Tax Commission,
State Office Building,
Denver, Colorado.

Dear Sir :

In your letter of the 14th inst., you request an opinion upon House Bill No. 200, approved and in effect May 1, 1935, and enclose several letters which you have received relative to said act. This office has received a large number of inquiries upon this bill, and we will attempt herein to cover all of the points brought to our attention, turning first to the interpretation of the law as it stands.

1. The act applies only to "taxes heretofore levied against *real property*" (Sec. 1). It does not refer to taxes upon personal property.

2. The law refers only to *taxes* and does not apply to special assessments which are not strictly taxes but assessments of benefits against the land benefitted, so "special taxes" such as sewer taxes, paving taxes, irrigation district taxes or water taxes are not covered by the act.

Therefore, we need not consider what the effect of the law would have been had it attempted to include levies made by irrigation or drainage districts or the like and which are in the nature of special assessments for the purpose, among others, of paying bonds or interest.

3. The law applies only to tax sale certificates held by the county. The proviso in Section 1 reads:

"Provided, however, that if the tax certificate on any property has previously been sold at any tax sale, or assigned under proper order of the Board of County Commissioners, to any individual, firm, association or corporation, the taxpayer shall be required to redeem or pay the same in the manner now provided by law."

So, if an individual, firm or corporation is the holder of the certificate, either through purchase at the original tax sale, or through an assignment of the certificate to him by the county, prior to the effective date of this act, the certificate is not affected by the act.

4. This part of the act (Sections 1 and 2) is of course operative only from the date of its approval to and including December 31, 1935.

5. It applies to "*all*" real property taxes delinquent on August 1, 1934, unless the tax sale certificate was obtained by an individual, firm, association or corporation, prior to the effective

date of the act, and the act applies to all real property taxes delinquent August 1, 1934, whether the real property has been sold, on account of such delinquency, or not.

6. When a landowner desires to take advantage of the law and tenders the principal amount of his taxes, the County Treasurer should thereupon issue to him a receipt and a redemption certificate, make the customary entries in the book of sales in his office, charge the customary fees therefor and add the cost of advertising as provided by the laws concerning redemptions. These laws have not been repealed and H. B. 200 merely creates a temporary modification thereof in regard to penalties and interest. It gives landowners a period of eight months in which they can clean up their back taxes without penalties or interest in all cases where the certificate was not held by an individual, firm or corporation at the time the act took effect. After December 31, 1935, if the taxes still remain delinquent, the County upon proper advertisement may under Section 3 of the act receive a tax deed to property upon which taxes have been delinquent for three years or more.

7. It is to be noted that the law permits the County Treasurer to turn over certificates in this manner only to the owner or mortgagee of the property in question and not to a stranger to the title.

8. It has been suggested that the effect of this act is to deprive the Board of County Commissioners and the Treasurer of the right under Section 7422 C. L. 1921, Senate Bill No. 433, approved and in effect February 16, 1935, or House Bill No. 772, approved and in effect April 10, 1935, to sell certificates during the period extending from the effective date of H. B. 200 to and including December 31, 1935.

Upon this point we are in doubt, but in any event this act, as above noted, gives the real estate owner an absolute right to effect redemption up to and including December 31, 1935, by payment of the principal only of his taxes which were delinquent August 1, 1934, and obviously the County authorities could not deprive him of that statutory right by selling the certificate after the effective date of said act.

9. We appreciate the fact that in many cases the personal property tax is added to the real property tax and the land sold for both. However, since H. B. 200 specifically applies only to taxes "levied against real property" the real property taxes only can be paid without penalties and interest. If the law is to be given effect the real property taxes must be separated from the personal property taxes or else the owner must pay his personal property taxes plus interest and penalties. If the personal property taxes remain unpaid, of course they are still a lien against the personalty taxed and can be collected by the County Treasurer by distraint and sale.

The above, of course, assumes the constitutionality of Sections 1 and 2 of House Bill No. 200.

We have made such investigation into this question as time permitted. We find no decision of our own courts throwing light upon this matter, while the decisions of the courts of other states in cases involving similar laws appear to be somewhat divergent in their conclusions.

Although the question of constitutionality is, of course, important, yet it is not of vital concern from the standpoint of the public for the reason that if said sections of the act should ultimately be held invalid the penalties and interest which the act purports to waive would still remain lawful charges against the real estate and doubtless could be collected through future sales as for delinquent taxes.

We have found several cases upholding statutes very similar to H. B. 200.

In *Thompson v. Huston* (Okla. 1935) 39 Pac. (2d) 524, 526, the act involved reduced the interest upon tax sale certificates held by counties from 18% to 12%. The court upheld the law, pointing out that interest upon delinquent taxes was in the nature of a punishment or penalty for nonpayment of the tax and was not interest in the true sense and thus not part of the tax itself. The court also stated that the County Treasurer when he bids in land at a tax sale acts as an agent and instrumentality of the state in its effort to collect taxes.

In *Biles v. Robey* (Ariz. 1934) 30 Pac. (2d) 841, an act permitted delinquent taxes to be extinguished by payment of the principal, waiving the 10% interest, in twenty semi-annual installments with 6% interest upon delinquent installments, in cases where the land had been sold to the county. The court sustained the act holding that interest on delinquent taxes is a penalty and can be waived by the state and that the classification in the law was reasonable and based upon reasonable and natural differences.

In *Grieb v. National Bank of Kentucky's Receiver* (Ky. 1933) 68 S. W. (2d) 21 and *Russell v. County Board of Education*, 247 Ky. 703, 57 S. W. (2d) 681, a law similar to the Colorado act was sustained although no question of discrimination or equal protection of the laws was discussed in the opinions. The court observed however, in the *Grieb* case that contractual relations arise after a sale to an individual, which cannot be altered, but that after a sale to a county the land and not the owner is liable for the taxes and the state may fix terms upon which the land may be redeemed.

In the following cases various laws reducing or waiving interest on delinquent taxes were attacked but were upheld upon the theory that "penalties" of this kind may be waived by the State. However, no question of discrimination between certificates held by individuals and those held by the county was considered and seems not to have been involved.

State v. Koehn (Mo. 1933) 61 S. W. (2d) 750.

Jones v. Williams (Tex. 1931) 45 S. W. (2d) 130 (exhaustive review of authorities).

Henry v. McKay (Wash. 1931) 3 Pac. (2d) 145.

Livesay v. De Armond (Ore. 1930) 284 Pac. 166.

However, in *Sanderson v. Bateman* (1927) 78 Mont. 236, 253 Pac. 1100, and *State v. Fischel* (1933) 94 Mont. 92, 20 Pac. (2d) 1057, two laws very much like the Colorado Act were held unconstitutional on the ground that they violated the provision of the Montana Constitution which forbids the extinguishment of any obligation or liability due the state except by payment into the proper treasury, and also upon the ground that they violated the equal protection clause of the Fourteenth Amendment of the Federal Constitution. See also 68 A. L. R. 999, and 61 Corpus Juris, page 1493.

It is apparent from the Act itself, as well as from the foregoing judicial decisions involving somewhat similar statutes, that sections 1 and 2 of the act might successfully be challenged upon the ground that they extend relief to those who are liable for interest and penalties on account of delinquent taxes on real property and that no such relief is extended to those who are liable for interest and penalties on account of delinquent taxes on personal property; or on the ground that said sections apply only to tax sale certificates held by the county, and thus offer no relief to delinquent real property owners in cases where the tax sale certificate is privately owned, either by virtue of purchase at a delinquent tax sale, or of purchase from the county after delinquent tax sale and prior to the effective date of the Act now in question. In short, the discrimination or classification established by this act might possibly be held to be unwarranted and so unreasonable as to invalidate the act under the equal protection clause of the Fourteenth Amendment to the Federal Constitution. Further, said sections 1 and 2 are possibly in conflict with Section 38 of Article 5, or Section 3, or Section 8 of Article 10, of the State Constitution. However, in the absence of applicable decisions of our State Supreme Court, and in view of the apparent conflict of judicial authority in other states, and for the reason that no opinion of this department could settle the matter of constitutionality, we do not feel called upon to pass judgment in this respect.

Judicial decisions in other states are, likewise, in some conflict upon the question as to whether or not a public officer may be subjected to civil liability for acts done by him under color of his office while proceeding under a statute afterwards adjudged unconstitutional (See 12 Corpus Juris, 8801 and 6 Ruling Case Law, page 118). We find no Colorado decision bearing precisely upon this point. But the doctrine laid down by our State Supreme Court in the case of *People Ex Rel. v. Leddy*, 53 Colo. 109, to the general effect that it is the duty of public officers to assume that

statutes enacted by the General Assembly are valid, until successfully challenged by some one whose rights are affected thereby, and in the case of *American Bonding Company v. People*, 53 Colo. 512, to the general effect that a public officer acts officially even though he proceeds under a statute afterwards adjudged unconstitutional, we are firmly of the opinion that no County Treasurer would ever be held liable, either personally or upon his official bond, by reason of having acted under Sections 1 and 2 of this Act and receipted for delinquent real estate taxes in full upon payment of the principal amount thereof without interest and penalties, even though at some future time said sections should be held invalid.

In addition to this, as has been observed, if said sections 1 and 2 should be adjudged invalid, the interest and penalties waived under it could doubtless be collected through subsequent sale of the real estate as for delinquent taxes, with the result that no material injury would ultimately be sustained by the state, the county, or other political subdivisions by reason of administration of this act as it stands.

In our opinion County Treasurers are fully warranted in proceeding under this Act as it reads, and as above interpreted, but we offer the final suggestion that inasmuch as under Section 5978 Compiled Laws of 1921, the respective District Attorneys are made the official legal advisers of the County Treasurers, it would be wise and prudent for the County Treasurer to obtain the opinion of the District Attorney of his judicial district upon the questions raised by this statute.

Very truly yours,

PAUL P. PROSSER,
Attorney General.
CHARLES ROACH,
Assistant Attorney General.
PIERPONT FULLER, JR.,
Assistant Attorney General.

95

3.2% BEER

To Al. Hoyt, May 20, 1935.

Restaurants.

1. A restaurant may take out a 3.2 beer license but if it does it is limited to the sale of 3.2 beer.

2. If a man has already paid for a 3.2 license under the old law, he is permitted to continue to sell 3.2 beer under that license, but must file bond and be subject to all provisions of the new 3.2 beer law.

3. All moneys received by town for 3.2 beer licenses must be paid into the county treasury for the use and benefit of the old age pension fund. If this money is paid by a town to the county and

expended for old age pensions, there is no way by which it can be refunded.

96

STATE INSTITUTIONS

To Dr. Ira Richardson, May 22, 1935.

Authority of Board of Trustees to take title to improved real estate.

A Board of Trustees has authority to accept a conveyance to it as such Board, of the property mentioned, simply taking a deed subject to the existing mortgage indebtedness remaining against the property. The present mortgage should be cancelled, a new mortgage or deed of trust given in lieu thereof, providing specifically that the indebtedness should be payable only out of the net income of the property,—the accompanying notes also containing the same provision.

97

COAL MINING LAW

To Thomas Allen, May 24, 1935.

Interpretation of Coal Mining Code.

1. The Coal Mine Department may not make refunds on licenses where the operator of a mine has produced less coal than the license calls for.

2. A license may not be transferred from one operator to another.

3. If an operator produces in excess of one thousand tons of coal and gives up his lease or loses it, and the mine is purchased by another party, the purchaser of the license cannot compel the second party to pay his share of the license.

4. If the second party refuses to pay anything to the purchaser of the license and the purchaser takes the license with him when he leaves, the second operator cannot be compelled to secure another license for said mine.

98

CONSERVANCY BOARD

Organization of Public Irrigation Districts.

May 25, 1935.

Messrs. McCloskey & Beise,
Attorneys at Law.
Durango, Colorado.

Gentlemen:

You submit for the consideration of this office several inquiries with respect to the requirements of a petition to the State Conservation Board for the organization of a public irrigation district under the provisions of Senate Bill No. 116, enacted by the 30th General Assembly, to-wit:

1. Where certain land within the exterior boundaries of a

proposed district cannot be irrigated because of its character, topography, etc., may such land be excluded in forming the district? If so must such land be bounded by legal sub-divisions?

Paragraph (a) of Section 3 of the act provides that "when- ever the *land owners of any prescribed area* within the State of Colorado shall desire to organize a public irrigation district, etc." It will be noted that neither this language nor any other provision of the act contains any affirmative requirement with respect to con- tiguity, or compactness of the lands to be included in the proposed district.

It would appear therefore, that under the facts stated in your question non-irrigable lands need not be included in the proposed district.

Sub-paragraph 2 of paragraph (b), Section 2, requires "a definite description by metes and bounds of the area included within the exterior boundaries of said proposed district; and also a de- scription by legal sub-divisions of the area proposed to be organ- ized."

The requirements above indicated would be substantially met if the petition contains: (1) Description of the external bound- aries of the district by metes and bounds; (2) Description by metes and bounds of the lands to be excluded and (3) Description by legal sub-divisions of the lands left within the proposed district.

2. May the area included in the proposed district be described by townships?

If the proposed district includes an entire township, then the description in substantially the following language would be in compliance with the statute, viz.: Lands included in Sections 1 to 36, both inclusive, of the correctly numbered township and range. On the other hand if a portion of the township is to be included in the proposed district it would be necessary to describe the lands by sections and fractional parts thereof, together with the proper township and range.

3. Should incorporated cities or towns be included in or ex- cluded from the proposed district?

The answer to this inquiry is found in paragraph (a), Section 3, which provides that incorporated cities and towns are to be ex- cluded from such district.

4. Should Indian lands be included and if so who is qualified to sign the petition as owner of such lands?

The answer to this inquiry depends upon the provisions of the Federal law and the rules and regulations issued pursuant thereto and whether the lands are tribal or held by allotments covered by patents to individual Indian landowners. The local representative in Denver of the Indian Bureau suggests the advisability of taking up this matter with the Bureau of Indian Affairs, Washington, D.

C., and submitting to that official a list of the particular Indian lands concerned.

5. Will it be necessary for the petition to be verified?

In the absence of an express provision in the statute requiring verification, it would appear to be sufficient in order to establish *prima facie*, the facts contained therein for the petition to recite pursuant to the provisions (c) of Section 3: That the undersigned persons are the owners in the aggregate of a majority of the acreage of said proposed district and that said petitioners constitute a majority of the owners of land within said district. The petition should also be verified by one having personal knowledge of the above indicated facts.

6. With what details should the "nature, location, and method of operation of the proposed irrigation works" be set forth in the petition to meet the requirements of sub-paragraph 3 of paragraph (b) Section 3?

The above-referred-to Section states that the petition shall contain "a general description" covering the items above indicated. The petition therefore should, with respect to the "nature" of the irrigation works, contain a general description of the canal system, diversion, headworks and storage reservoirs indicating the carrying and storage capacities, dimensions of storage dams, whether earth, concrete or masonry, together with such other general facts as may appear pertinent; a description by legal sub-divisions of the dam, headworks, canal system and storage reservoir; and a statement as to the method of operation of the works, disposal of the water and such general facts as will enable the Conservancy Board to pass upon the feasibility of the plan proposed.

7. May established voting precincts be used as the basis for the sub-divisions of the district as required by sub-paragraph 6, paragraph (b) of Section 3?

Established election precincts would not be a compliance with the law unless it should so happen that the proposed sub-division would in each instance be coterminous with the voting precinct, and each of the three sub-divisions substantially equal in population.

8. With what particularity should the powers of the proposed district be set forth in the petition?

It would appear to be sufficient to state in general terms that the proposed district is to be organized for the purpose of exercising the powers granted to such districts by the Conservancy Act, and as enumerated by the appropriate sections thereof.

In making above suggestions it will be understood of course that we do not undertake to bind the Conservancy Board in regard to any action it may feel proper and necessary to take when a petition covering a concrete project is formally presented for its official action. However, in view of the fact that the law is long, somewhat involved and in some respects inaccurately drawn, we

suggest that you give the same further careful consideration and after you have prepared in final form your petition and before securing the signatures thereto, if you care to submit it to this office we will be glad to go over the same as to form and make such further suggestions as may appear advisable.

Yours very truly,

PAUL P. PROSSER,
Attorney General.

SHRADER P. HOWELL,
Assistant Attorney General.

99

COMPATIBLE OFFICES

To Gov. Johnson, May 27.

Eligibility of member of Legislature.

The position of a member of the Special State Relief Committee and of Director thereof are employments only and not civil offices under the State within the meaning of Sec. 8, Art. 5 of the State Constitution; and, therefore, a member of the General Assembly is not ineligible for designation as a member of said Committee, or for employment by the Committee as its Director. (Exhaustive 31-page opinion.)

100

SMALL LOAN ACT OF 1935

To Walter I. Raney, May 29, 1935.

Refinancing automobile loans.

The refinancing or extension of a purchase money obligation, is a forbearance of money within the contemplation of the Small Loan Act of 1935, and automobile financing companies should obtain a license under said act.

London v. Toney, 189 N. E. 485, 95 A. L. R. 1105, 1110;
Hellerstein, Chattel Mtgs. (2ed) Sec. 71.

101

FEES

To Helen A. Hurlburt, May 29, 1935.

Docket fee under H. B. 798.

Strictly probate proceedings in the county court do not fall within the scope of *civil actions*, as the words are used in Sec. 9 of H. B. 798, and therefore are not subject to the filing tax provided in said act.

Citing cases.

102

BOARD OF HEALTH

To R. L. Cleere, May 31, 1935.

Restaurant law.

A "restaurant" is defined as an establishment "whose *principal* business is the sale of meals, and in which room nothing is sold

excepting meals." In the interest of public health it would be proper to require that the room be separated by substantial walls or partitions on all sides and extending from the floor to the ceiling, with substantial doors at the entrances and exits.

103 **INSURANCE**

To Jackson Cochrane, June 3, 1935.

Administrative officers.

Re: Discretionary powers of administrative officers, particularly in granting or refusing to grant licenses. (267 U. S. 126, 118 U. S. 356, 75 N. W. 711, 63 Atl. 928, 12 A. L. R. 1435, 100 S. E. 286, 155 N. E. 138.)

104 **COLO. PSYCHOPATHIC HOSPITAL**

To Dr. F. G. Ebaugh, June 4, 1935.

Admissions to.

Petition for admission to the Psychopathic Hospital may be filed by "any reputable person." Hence a member of the Hospital staff may file same.

Sec. 4, Ch. 158, S. L. 1923.

105 **CHAIN STORE TAX**

To C. M. Armstrong, June 4, 1935.

Great Western Sugar Co.

The company is engaged in selling to a large class of persons, beet seed, phosphate and paris green, and the places where these sales are made come within the definition of a store as set out in Sec. 8 of the Act, being places "in which goods, wares or merchandise of any kind are sold, either at retail or wholesale."

106 **INSURANCE**

To Jackson Cochrane, June 5, 1935.

Mutual companies.

Money loaned to a mutual insurance company and interest thereon is payable only out of surplus (Sec. 2567, S. L. '21).

Officers and directors of insurance companies cannot borrow money therefrom except as specifically provided for by statute in case of loans on policies (Sec. 2478, C. L. '21).

107 **STATE REFORMATORY**

To Gov. Johnson, June 5, 1935.

Paroles from.

While there is no specific statutory authority for granting paroles to inmates of the State Reformatory, the weight of author-

ity is clearly to the effect that the power of pardon includes the power to parole (46 C. J. 1205, Sec. 67). Therefore the Governor has the power to parole prisoners serving indeterminate sentences in the State Reformatory.

108 **STATE CONSERVANCY ACT**

To Gov. Johnson, June 5, 1935.

Effective date of act without safety clause.

While the bill contains an emergency clause, it does not carry the public safety clause and therefore the act will not be in effect until 90 days after the adjournment of the legislature or until July 6, 1935 (66 Colo. 319).

109 **NATIONAL GUARD**

To Executive Council, June 6, 1935.

Annual encampments—Pay of State employees.

We are of opinion that it is proper for State Employees, who are members of the National Guard, to be allowed two weeks vacation with pay from the State, in addition to the two weeks during which time they serve as members of the National Guard in their annual encampment.

110 **TAXATION**

To Alexander Bowie, June 6, 1935.

Special assessments.

H. B. No. 200 has no reference to Irrigation District taxes, since they are in the nature of special assessments and are not really taxes. *Interstate Trust Co. v. Montezuma &c*, 66 Colo. 219; *Henrylyn Irrig. Dist. v. Thomas*, 66 Colo. 300.

111 **TOWNS AND CITIES**

To C. A. Johnson, June 7, 1935.

Investment of funds—Firemen's Pension Fund.

1. The City Treasurer is authorized to invest inactive funds in his hands only pursuant to a duly enacted resolution of the City Council, in securities of the character provided by the Act (H. B. 330).

2. Under Sec. 9366, C. L. 1921, the management and control of the Firemen's Pension Fund is within the jurisdiction of the Board of Trustees.

112 **INSURANCE**

To Jackson Cochrane, June 7, 1935.

Regulation of agents.

Colorado Insurance Laws regulating agents do not extend to the solicitation of insurance on Government reservations and army posts.

The statute prohibiting the writing of insurance on children under a certain age (Sec. 2512, C. L. '21) can be made effective through control over company where prohibited business is written on army post.

113**CIVIL SERVICE**

To C. S. Commission, June 11, 1935.

Persons on preferred lists.

A person who has been permanently appointed to a position in the classified service and is separated through no delinquency or misconduct and whose name is placed on the Preferred List of Eligibles and who later accepts a permanent certification to another position, is no longer on the Preferred List, and would not be entitled to claim appointment to another position which he prefers.

114**INSURANCE**

To Jackson Cochrane, June 12, 1935.

Mutual insurance companies.

1. A foreign mutual insurance company whose charter prohibits the levying of an assessment, cannot be admitted to Colorado where, by the statute (Sec. 2566) the policies issued by such company must contain the assessment feature.

2. This State cannot concede permission to a foreign corporation to exercise powers in excess of those granted by its charter. (Vol. 17, Fletcher Cyc. Corporations, Sec. 8343; American W. W. Co. v. Farmers L. & T. Co., 20 C. 203; Relfe v. Rundle, 103 U. S. 222).

115**LIQUOR CODE**

To Theodore Epstein, June 7, 1935.

Rectifier's license.

A company licensed as a "rectifier" is restricted to the rectifying of spirituous liquors which are obtained by distillation, and such license does not permit the rectifying of wines which result from the process of fermentation.

116**SALES TAX LAW**

To Charles H. Woods, June 15, 1935.

Sales in National Parks.

We are of opinion that operators engaged in selling merchandise or meals to the public, are subject to the Colorado Sales Tax, under reservations contained in the Act of the Colo. Legislature ceding Estes Park to the United States. (S. L. 1929, 475).

117

MOTOR VEHICLES

To John F. McGuire, June 17, 1935.

Taxation and registration.

Interpretation of House Bill No. 531, 30th G. A., which does not go into effect until January 1, 1936, relating to payment of taxes before obtaining license (law later declared invalid by District Court of Denver).

118

STATE EMPLOYES' RETIREMENT

To C. C. Hezmalhalch, June 18, 1935.

Employees who did not join Association when law went into effect.

Board has no authority to admit to membership those employees who were entitled to membership at the time of the passage of the Act and who failed to avail themselves of the opportunity within the time specified in the Act.

119

INSURANCE LAW

To Jackson Cochrane, June 26, 1935.

Fraternal benefit societies.

The Colorado Fraternal Benefit Societies Act or General Insurance Laws do not require fraternal benefit societies to provide for a grace period in benefit certificates issued by them. The matter is left to regulation by constitution and by-laws of society.

120

RELIEF

To Colo. State Relief Committee and Executive Council, July 5, 1935.

Payment of workmen's compensation on relief workers.

In view of the broad powers vested in the Committee to cooperate with the Federal Government in the relief of destitution in this State, and keeping in mind the well established principle that statutes enacted by the same General Assembly for the accomplishment of the same general purpose, must be read, construed and considered together, there is no doubt of the power and authority of the Committee to apply such of its funds as may be necessary to the payment of workmen's compensation insurance in accordance with the requirements of the Federal Government.

121

FEES AND SALARIES

To J. L. West, July 8, 1935.

Additional docket fee.

This additional filing fee imposed by Sec. 9 of Ch. 91, S. L. 1935 (H. B. 789) upon the filing of "each and every civil action

filed in the office of each clerk of the county and district of the State" to provide a fund for the compilation of the Colo. Statutes, is not applicable to adoption proceedings.

122 FEES AND SALARIES

To Ruth W. Wallis, July 8, 1935.

Additional docket fee.

The additional fee of \$1 should be collected upon the filing of proceedings for the determination of heirship.

123 LIQUOR

To Chas. M. Armstrong, July 8, 1935.

Distribution of license fees to local option districts.

The communities in this State which under the local option provisions of our liquor laws, have excluded or seek to exclude the traffic in liquors within their boundaries, are, nevertheless entitled to receive their share of such fees in proportion to population for the use of the Old Age Pension Fund.

124 COLORADO STATE HOSPITAL

To Executive Council, July 10, 1933.

Emergency expenses.

Under the statutes and in conformity with the Resolution of the Executive Council, adopted and approved on July 3, 1935, the Executive Council has authority to permit expenditure of \$200,200 out of State funds available for the general support and maintenance of the Colorado State Hospital at Pueblo, to meet a Federal Government grant of \$182,000, for the purpose of erecting certain buildings made necessary by flood damage occurring on May 30, 1935.

Citing Secs. 575, 576 and 577, C. L. 1921; and Resolution of Executive Council.

125 CHIROPRACTIC BOARD

To D. H. Burwell, July 11, 1935.

Re: License of H. L. Burdick.

The State Board of Chiropractic Examiners has no power to review any action taken by the State Board of Medical Examiners pursuant to the authority vested in the Board of Medical Examiners by Secs. 4555 et seq., C. L. 1921.

Supplemental opinion Sept. 5. If applicant had met all requirements for a license and Medical Board had neglected to issue license, present board can perform that ministerial act.

126

SALES TAX LAW

To C. M. Armstrong, July 11, 1935.

Re: Railroad purchases.

All sales to railroad companies of tangible personal property, consummated in this State, are subject to the Sales Tax except those involving items upon which a tax is collected from the vendees by the railroads, and specifically exempted by Subdivision (o) of Sec. of the Act of '35.

127

EXECUTIVE COUNCIL

To the Executive Council, July 12, 1935.

Publication of state magazine.

1. No part of the initial cost incident to the publishing of the first two issues (or any) of such magazine may legally be paid by any department of the State.

2. In the absence of express legislative authorization therefor, the Executive Council has no authority to contract for the publication of such a magazine, or for any costs in connection therewith.

Moreover, from the standpoint of public policy it would be most unwise to project the State of Colorado into such a publishing venture.

128

FEES AND SALARIES

To State Land Board, July 15, 1935.

Salary fixed in long appropriation bill.

The salary of a State employe which is provided for by periodical appropriations rather than by a continuing statutory appropriation is limited by the items provided for such purpose in the General Appropriation Bill.

129

FEES AND SALARIES

To Homer F. Bedford, July 15, 1935.

Dairy Inspectors.

Ch. 19, S. L. 1935 expressly fixes the salaries of dairy inspectors and to that extent must be considered as overruling or modifying the general salary act of 1931, which fixes a general schedule of salaries but does not of itself amount to an appropriation of money to pay such salaries.

130

NEWSPAPERS

To Fred L. Bradshaw, July 16, 1935

Suspension of publication.

Under the provisions of Ch. 155, S. L. 1935, the Dolores Star could not qualify as a medium for the publication of legal notices

or advertisements at the present time since it appears that the paper suspended publication from December 10, 1934, until May, 1935, because of foreclosure of a mortgage on a typesetting machine, which could not be considered a "casualty beyond the control of the publishers," such as is contemplated by the statute.

131**STATE HIGHWAY PATROL**

To Chas. D. Vail, July 17, 1935.

Revision of Highway Department budgets.

1. The General Assembly had authority to establish the State Highway Courtesy Patrol and to provide for the maintenance thereof out of moneys of the State Highway Fund, notwithstanding the fact that said Fund had already been budgeted for the year.

2. While the Highway Act does not expressly provide for the revision of a budget after it has been made, it is probable that where a subsequent legislative act compels a revision of the budget because of application of part of another fund to another purpose, the Highway Department, with the approval of the Governor, would have implied authority to revise the budget in accordance with the necessity created by a legislative appropriation of part of the funds budgeted to a purpose other than that covered by the budget.

132**INSURANCE**

To Jackson Cochrane, July 19, 1935.

Blanket insurance for Firemen.

Ch. 116, S. L. 1935, permits the board of trustees of the Firemen's Pension Fund to insure members of department by a blanket insurance policy, but said board has no authority to expend any portion of said fund to pay premiums on individual insurance policies.

133**SALES TAX**

To S. G. Shraiberg, July 19, 1935.

Exemptions.

Lumber used by greenhouses for benches not exempt.

134**OFFICERS**

To E. E. Wheeler, July 20, 1935.

Members of General Assembly.

The positions of Supervisor, Deputy Supervisor and patrolmen, established by Ch. 125, S. L. 1935, are civil offices under the State, and members of the General Assembly are ineligible, under Sec. 8, Art. V of the Constitution to appointment to such positions during the term for which they were elected.

135 LIQUOR

To Hon. Geo. W. Lane, July 20, 1935.

Duration of license.

A licensee under the Intoxicating Liquor Law (Ch. 142, S. L. '35) is required to pay the full yearly fee, even though at the time the license is issued there remains only a portion of the year until the date of expiration of all licenses, viz.: Dec. 31.

136 SCHOOL LAW

To F. E. Spencer, July 22, 1935.

Transfer of surplus funds to retire bonds.

Although there is no law expressly authorizing such procedure, the transfer of funds in a special school fund to the bond-sinking fund for the purpose of paying the outstanding bonds would constitute good business and no taxpayer would suffer thereby. Therefore the school authorities would be justified in making transfer of part of the surplus fund, for the purpose of retiring such bonds.

137 BOARD OF HEALTH

To R. L. Cleere, July 22, 1935.

Cannot impose fees to administer narcotic act.

Since no taxes, fees or charges can be imposed by a public officer unless the law under which he acts authorizes such imposition; and since there is no such provision made in the Narcotic Act (Ch. 107, S. L. '35) no such fee can be charged.

138 FEES AND SALARIES

To Mrs. Verne L. Capron, July 22, 1935.

Additional docket fee.

The additional filing fee to defray cost of compiling Revised Statutes of 1935, need not be collected by the Clerk of the Juvenile Court as said act applies expressly to District and County Courts.

139 INSURANCE

To Jackson Cochrane, July 22, 1935.

Where auto club membership includes insurance.

Agents of Motor Service Club (non-profit assn.) soliciting memberships therein, must obtain licenses from Insurance Department where larger part of membership fee is expended for payment of insurance premiums on insurance placed in an insurance company by the club.

The thing actually sold is insurance and not mere membership in motor service club.

Citing Opinion 399, Report of Attorney General, 1927-28.

140 STATE EMPLOYEES RETIREMENT ASSOCIATION

To R. J. Heath, Secretary, July 23, 1935.

Employee failing to pay assessments in arrears.

A state employe who has never met the requirements of the association,—having failed to pay the assessments in arrears, with interest, or the membership fee of \$10, has never become a member of the Association, and any amount paid by such employe on account of previous employment should be returned and her name erased from roll of membership.

141 SALES TAX

To T. R. Woodrow, July 24, 1935.

Federal agencies.

The Mesa Verde Park Co., is no doubt in competition with Colorado citizens outside the Park, and even though it has a lease from the Secretary of the Interior, is carrying on an ordinary private business, and is subject to a sales tax.

Citing cases.

142 BUILDING AND LOAN

To J. R. McClelland, July 24, 1935.

Continuing proxies.

So-called continuing proxies given by shareholders to management of association at time of joining association are ineffectual when voted for purpose of "federalizing" the association.

143 BEER

To Jas. H. Carr, July 24, 1935.

Stamp taxes.

Carton stamps can be affixed on basis of liquid contained in whole carton.

144 SALES TAX LAW

To M. G. Connally, July 24, 1935.

Charge for services.

Under contracts between manufacturers of appliances and their customers, where charges are divided 35% for personal services; 25% for royalty for licenses under patent and 40% for use or rental of appliances, the 35% for personal services may be exempted from the Colorado sales tax. The remaining 65% is taxable under Sec. 2 (p) of the Act of 1935. Such transactions do not come within interstate commerce clause.

145

RELIEF

To Earl Kouns, Director, July 25, 1935.

Rent of quarters for FERA

The official Colorado Relief Committee is fully authorized to expend such of its funds as may be necessary to provide quarters for any Federal Agency with which it is cooperating.

146

GAME AND FISH

To R. G. Parvin, July 26, 1935.

Hunting in game refuge.

Ch. 102, p. 368, S. L. 1929, which authorizes the Game Commissioner to declare an open season upon any species of game in any county or district where such game has become so abundant as to constitute a menace to property, does not apply to territory within the limits of game refuges established by other statutes.

147

CITIES AND TOWNS

To J. R. McClelland, July 29, 1935.

Investment of funds.

Senate Bill No. 330 (1935) authorizing treasurers of cities and towns to invest funds in "the bonds of and other corporation which is created by the United States as a governmental agency or instrumentality" does not permit them to invest such funds in "insured" paid-up building and loan shares. Building and Loan Associations are not governmental agencies or instrumentalities merely because shares are insured by a corporation whose capital was subscribed for and paid in by Federal Government.

148

FEES AND SALARIES

To H. W. Tiemann, July 31, 1935.

Dept. of Vocational Education.

Salaries limited by appropriation.

149

CHAIN STORE TAX

To C. M. Armstrong, July 31, 1935.

Control by common stock ownership.

Subjects stores to tax.

150

INSURANCE

To Jackson Cochrane, Aug. 5, 1935.

Retaliatory provisions.

Construing Sec. 2550, C. L. '21, as amended (retaliatory statute) a Texas Lloyd's Association must deposit \$60,000 in securities with Colorado Insurance Department as condition precedent to doing business in Colorado.

151

LIQUOR LAW

To Jas. H. Carr, Aug. 5, 1935.

Refunds.

When applicant buys a license under the Liquor Code he is entitled to a refund of any unused portion of any existing state license he may hold.

An applicant for a 3.2% beer license is not entitled to credit for any license he may hold under former laws.

152

PUBLIC UTILITIES COMMISSION

To Edward Wheeler, Aug. 7, 1935.

Authority to make contract with Interstate Tax Service to audit records.

Since the Commission is an agency of the State having only delegated powers, any authority to enter into such a contract must be governed by existing constitutional and statutory provisions and no such power exists. (Secs. 11, 12, 14, Ch. 120, S. L. '31.)

Art. V, Sec. 28 Const. Colo. prohibits the payment of any claim against the State without previous authority of law.

153

SALES TAX

To Chas. M. Armstrong, Aug. 7, 1935.

Chemicals.

Chemicals used for the purpose of destroying noxious weeds are not on the list of exemptions mentioned in the Sales Tax Law and, therefore, are taxable.

154

SALES TAX

To Chas. M. Armstrong, Aug. 7, 1935.

Auto equipment sold to be used in interstate commerce.

The Colorado Sales Tax Law is an excise tax levied on the sale and not on the property sold. The sale is completed and the tax imposed before the property is used in interstate commerce. Therefore it is not a direct burden on interstate commerce and should be collected.

155

SCHOOLS

To Lucille D. Horton, Aug. 8, 1935.

Closing of schools.

The question of closing certain schools in the district and selecting which schools are to be closed is an administrative function of the school board in a first class school district, and the decision of the school board is, under the law, subject to review by the county superintendent. The county superintendent may not refuse to assume jurisdiction.

156

RELIEF

To E. M. Kouns, Aug. 8, 1935.

Commission for handling by County Treasurers.

Under no circumstances should the county treasurers charge a commission for handling money belonging to the Official Colorado State Relief Committee.

157

SCHOOLS

To Charles Bloom, Aug. 9, 1935.

Balances in general school fund to credit of several districts cannot be turned into general school fund of county.

158

FEEES AND SALARIES

To Geo. A. Barker, Aug. 10, 1935.

Additional docket fee.

“Civil action” as used in H. B. 789, providing for an additional filing fee of \$1.00, means the ordinary action in which there is a controversy between plaintiff and defendant. The act does not apply to the filing of Transcripts of Judgment from Justice Courts.

159

CITIES AND TOWNS

To W. R. Wood, Aug. 10, 1935.

Electric light franchise.

1. Procedure to grant franchise. (Secs. 9172, 9167-9171, C. L. 1921.)

2. The offices of member of Town Council and Town Clerk are incompatible and may not be held by the same person.

160

FEEES AND SALARIES

To Wm. O. Adkins, Aug. 13, 1935.

Deputy game warden.

While Sec. 1426 of the Compiled Laws of 1921 provides that a deputy game warden may be paid not to exceed \$125 per month, that does not prevent the Game & Fish Commissioner from fixing the salary of a newly appointed deputy at a lesser amount. (Sec. 7, Ad. Code Bill.)

161

AGRICULTURAL COLLEGE

To Chas. A. Lory, Aug. 14, 1935.

Non-resident students.

Non-resident student presumed to continue to be non-resident during his attendance at school, by resolution of Board.

162

SECURITIES

To A. J. Morley, Aug. 16, 1935.

Plan to run placer mine through sale of lots to individuals, lease of same to placer company and owner to participate jointly in profits, is a mere device to avoid the Securities Act, and Securities Commissioner should look to substance rather than form and compel conformance to Securities and Fraudulent Practice Act.

163

INSURANCE

To Jackson Cochrane, Aug. 16, 1935.

Revocation and relicensing.

A mutual insurance company whose license has previously been revoked, may be relicensed upon correcting the conditions that brought about the revocation.

Revocation in no manner affects the corporate entity of the company; but merely suspends the power to carry on an insurance company.

164

SCHOOLS

To Inez J. Lewis, Aug. 19, 1935.

Budgets.

In cases of emergency a school district may reopen its budget and provide for additional moneys in the Emergency Fund. (89 Colo. 149).

165

INSURANCE

To Jackson Cochrane, Aug. 20, 1935.

Mutual Liability Insurance.

The Mutual Liability Insurance Act of 1915, Sec. 2634 et seq. and the Mutual Fire Insurance Act, Sec. 2540, et seq., were not repealed by the enactment of the Mutual Insurance Act of 1921.

Repeal by implication is not resorted to where seemingly repugnant acts can be reconciled by fair and reasonable construction.

Kallenberger v. People, 9 Colo. 233.

166

INDUSTRIAL RECOVERY ACT

To E. V. Dunklee, Aug. 20, 1935.

Constitutionality.

Ch. 89, Session Laws of 1935 (The State Industrial Recovery Act) is declared unconstitutional.

167

INSURANCE

To Jackson Cochrane, Aug. 20, 1935.

Residence for agent's license.

An applicant for an agent's license is a *resident* of Colorado within the requirements of the insurance laws, when he is located within Colorado with an intent to remain here as a fixed present domicile.

Merrill v. Shearston, 73 Colo. 230.

Tangman v. Moyers, 90 Colo. 308.

168

CIVIL SERVICE

To H. C. Getty, Aug. 22, 1935.

Eligible lists.

The person standing highest on the Civil Service eligible list is entitled to appointment as Chief Collector of Revenue, or as Collector of Revenue.

169

INSURANCE

To Jackson Cochrane, Aug. 22, 1935.

Fraternal benefit societies.

The Policemen's Protective Association of Denver is not subject to the Fraternal Act, but specifically exempted therefrom by the provisions of Sec. 2629, C. L. 1921, as a society which limits its members to one hazardous occupation.

(This is an elaboration of opinion dated June 21, 1935).

170

LIQUOR LAW

To Teller Ammons, Aug. 23, 1935.

Requirement that food be served.

1. No specific minimum amount of food can be designated as sufficient to constitute a meal within the meaning of Sec. 4, par. (s) of the Code.

2. The word "meal" as used in Sec. 20, par. (a) of the Code is synonymous with "food."

3. It is essential that a separate and bona fide charge be made for meals or food served with intoxicating liquor.

171

WATER

To C. R. Shetterly, Aug. 23, 1935.

Ch. 145, S. L. 1935, Conservancy Districts.

The Act is constitutional. (Elaborate 16-page opinion).

172

CORPORATIONS

To James H. Carr, Aug. 28, 1935.

Duplication of corporate names.

There is nothing in our statutes that prohibits the admission of a foreign corporation into the State because it bears the same name as that theretofore adopted by a domestic corporation whose articles are on file in your office.

173

LIQUOR LAW

To Sidney R. Hahn, Aug. 26, 1935.

Fines imposed by towns.

Under Sec. 9158, C. L. '21, towns and cities may by ordinance place fines for violations of the liquor laws and liquor license fees in the miscellaneous fund.

174

TAXATION

To B. Frank Camp, August 28, 1935.

Payment.

The uniform practice throughout the State is to require that the first half of the taxes be paid before the last half is accepted. We believe this is the proper interpretation of the law. (Sec. 7371, C. L. 1921).

175

CHAIN STORE TAX

To Jas. W. Creamer, Aug. 28, 1935.

Ultimate control.

Under Ch. 216, S. L. 1935, The Bear River Coal Co., Keystone Coal Co. and Boulder Valley Coal Co., all owned or ultimately controlled and directed by the same persons, are subject to tax as a chain.

176

INSURANCE

To Jackson Cochrane, Aug. 30, 1935.

Insolvent company.

No mandatory duty is cast upon Insurance Commissioner by the word "shall" as appearing in Ch. 137, S. L. 1935, to take possession of insolvent legal reserve life insurance company when the Federal District Court has previously assumed jurisdiction over the company and appointed its receiver who is efficiently administering its affairs.

177

SCHOOL LAW

To Jas. H. Risley, Sept. 3, 1935.

Funds.

School funds appropriated for operating expenses of school district cannot be "tied up" by county treasurer in county warrants. (Art. 9, Sec. 4, Const., Sec. 6901, 8796, C. L. 1921).

178

TAXATION

To Colorado Tax Commission, Sept. 4, 1935.

Assessment of producing mines.

The value of the ore at the mine is the gross value, and after deducting the cost of hauling, freight and treatment, the result is the "gross proceeds" and, deducting from this amount the cost of extracting or mining, the final result is the "net proceeds."

Paxon v. Cresson G. M. & M. Co., 56 Colo. 206;

Tallon v. Vindicator Co., 59 Colo. 316, 338;

Chemical Co. v. Curtis, 77 Colo. 10.

179

FEES AND SALARIES

To Gov. Johnson, Sept. 4, 1935.

Increase in salaries.

Under Sec. 7, Ch. 37, S. L. 1933 (Administration Code Bill) if salary is fixed in appropriation bill it cannot be increased.

180

TAXATION

To C. C. Conant, Sept. 9, 1935.

Northern Colorado Irrigation Co.

Memorandum brief on question of whether or not the property of this company is exempt from taxation where Denver owns all of the stock in the company. (Citing many cases).

181

FEES AND SALARIES

To Harold D. Myer, Sept. 9, 1935.

State Dairy Commissioner.

Unless the salary of a position is paid by a continuing appropriation, a specific appropriation in the long appropriation bill or a special appropriation act is essential.

Ch. 156, S. L. 1931, fixing salaries of certain civil service employes is not a continuing appropriation.

182

STORE LICENSE TAX

To C. M. Armstrong, Sept. 9, 1935.

Application of act to departments and agencies of company.

183

IRRIGATION LAW

To Silmon Smith, Sept. 9, 1935.

Interpretation and effect of certain statutes establishing Water District 42 and Water District 63, in Mesa County.

184 WATER CONSERVATION DISTRICTS

To C. R. Furrow, Sept. 10, 1935.

Fees for filing certificate of approval.

Where the legislature places an additional duty upon a public officer without providing for compensation that duty is to be performed without fee.

McGovern v. Denver, 54 Colo. 415;

Leckenby v. Post Co., 65 Colo. 447;

Commissioners v. Walker, 66 Colo. 316.

Since the statutes make no provision for the collection of a fee for filing of a Certificate of Approval by the Board of Conservation, such filing should be made by the Secretary of State and the County Clerk, without a fee being paid by the State.

185 SALES TAX

To Chas. M. Armstrong, Sept. 11, 1935.

Irrigation company.

From the facts stated in the request for an opinion, we conclude that this company is the final purchaser and consumer, and, not being a "political subdivision" of the State in its "governmental capacity" is not entitled to exemption from the sales tax.

186 SALES TAX

To Chas. M. Armstrong, Sept. 11, 1935.

Construction company, restaurants, boarding houses.

Construction companies fall in the category of boarding houses or restaurants. The former pay a tax on supplies; the latter collect a tax on meals served.

187 BEER LICENSE—Stamp Tax

To James H. Carr, Sept. 12, 1935.

Fort Logan Post Exchange.

The Post exchange on the military reservation at Fort Logan is not exempt from the State stamp tax on malt liquors and malt beverages.

S. L. 1935, Ch. 142 and Ch. 82.

188 SCHOOL DISTRICT BONDS

To L. R. Jaramillo, Sept. 12, 1935.

Time of payment.

Bonds due may not be paid in installments, but must be paid in consecutive order when sufficient funds are in the hands of the county treasurer.

189 SCHOOL BUDGET

To E. E. Hatfield, Sept. 12, 1935.

High school tuition funds.

High school tuition funds should be divided equally among all students eligible to enter high school.

190 CHAIN STORE LICENSE TAX

To D. McCreery, Sept. 13, 1935.

Public Service Co.

The Public Service Company of Colorado is not exempt from the multiple chain store tax on the ground that the establishments where its electrical appliances are sold are primarily used for the purpose of increasing the output of electricity and gas by said company.

191 COMMISSION MERCHANT'S BOND

To Ben H. King, Sept. 13, 1935.

Covers short check.

Ch. 92, S. L. 1935, which amends the Produce Dealer Act (Ch. 72, amended, Ch. 66, S. L. 1931) enlarges the definition of "commission merchant" to include all persons who obtain possession or control of farm produce for payment in full of the purchase price of such commodities in lawful money of the United States or its equivalent. Under this definition a person in the business of purchasing farm produce and paying therefor by means of a check is doing business as a commission merchant and should be bonded. Since his bond guarantees the faithful performance of all contracts it would cover checks which he issues in such transactions.

192 LEGAL NOTICES

To G. E. Saunders, Sept. 14, 1935.

Sheriff designate paper.

The law imposes upon the sheriff the duty of giving notice of sale and he cannot be compelled to make publication in any newspaper the parties in interest may designate, but has the legal right to say where publication may be made.

193 SALES TAX

To T. C. McPherson, Sept. 16, 1935.

Electrical signs.

A tax is collectable on rented electrical display signs under paragraph P of Sec. 2 of the Sales Tax Act, even if not mentioned in contract.

194 REAL ESTATE BROKERS' BOARD

To A. J. Morley, Sept. 23, 1935.

Fraudulent Practices Act.

So-called "lease-hounds" and persons dealing in oil royalties should register under the Fraudulent Practices Act, rather than obtain licenses from the State Real Estate Brokers' Board.

195 CORPORATION LAW

To A. S. Hewitt, Sept. 24, 1935.

Federal agencies.

The Electrical Home and Farm Authority is practically a governmental agency and as such is not required to qualify and pay a tax as a foreign corporation in Colorado.

196 TAXATION

To Colorado Tax Commission, Sept. 24, 1934.

Main track, N. W. Terminal.

The records of the State Board of Equalization and of the Colorado Tax Commission show that for at least 28 consecutive years the main track mileage of this railroad has been considered as consisting only of that part of the line which extends from the terminus of the road in Denver to Utah Junction in Adams County, and distribution of the unit assessment appears to have been made on that basis. In view of this uniform and long continued practice as applied to this particular situation we think no change should now be made except by direction of a court of competent jurisdiction.

197 TAXATION

To B. H. Yount, Sept. 25, 1935.

Property turned over to County.

Property turned over to County Old Age Pension Fund becomes public property and is exempt from taxation.

198 TAXES

To F. E. Dunlevy, Sept. 25, 1935.

Payment.

Ch. 217, S. L. 1935, permitting payment of taxes without interest or penalties up to Dec. 31, 1935, does not prevent the advertisement and sale of property for delinquent taxes during the current year.

199 LIQUOR LICENSES

To C. H. Beeler, Sept. 26, 1935.

Credits allowed.

Credit allowed by a State Liquor Licensing authority upon the purchase of a new liquor license, for money paid under a former

liquor license cannot operate to retrieve that portion of the old liquor license money which has been turned over to the County Old Age Pension Fund.

200 CITIES AND TOWNS

To D. M. Ralston, Sept. 25, 1935.

Power to levy sales tax.

Cities of the second class may impose a sales tax for revenue purposes (Sec. 9046, C. L. 1921—2 sub).

Terrill v. McDonald, 32 Ariz. 30, 255 Pac. 485;

Cupp Grocery Co. v. Johnstown, 135 Atl. 610 (Penn.);

Tharp v. City of Clovis, 279 Pac. 69;

In re: Galusha, 195 Pac. 406, and 402;

Town of Swaney, 299 Pac. 652.

201 SALES TAX

To A. R. Allen, Sept. 25, 1935.

Blue prints, etc.

Business of blue printing, photostating and commercial photography are not subject to the sales tax.

Burgess & Co. v. Adams, 359 Ill. 427.

202 FEES AND SALARIES

To Harold D. Myers, Sept. 26, 1935.

Dairy Commissioner.

The salaries of the State Dairy Commissioner, or his inspectors and clerks cannot be augmented because the salaries of these persons are fixed by legislative enactment by Ch. 13, S. L. 1935.

See Sec. 7 of the Administrative Code.

203 COUNTY COMMISSIONERS

To G. W. Lane, Sept. 28, 1935.

Excess warrants.

A county board can issue excess warrants over and above 80% of the anticipated revenue to cover actual and imperatively necessary expenses of county government, notwithstanding the provisions of the Local Government Budget Act of 1933.

Secs. 8692, 8693 and 8694, C. L. 1921;

Bent County v. A. T. & S. F. Ry., 52 Colo. 609;

Commrs. v. U. P. R. R. Co., 63 Colo. 149;

Sweet v. D. & R. G. Co., 59 Colo. 131, 133, and other authorities.

204 FEES AND SALARIES

To H. F. Bedford, Sept. 30, 1935.

State Entomologist.

The salary of the State Entomologist is fixed by Ch. 4, S. L. 1935, at \$1000 per year for the biennium 1935-37. The act also appropriates that amount for this salary.

205 LIQUOR

To James H. Carr, Sept. 30, 1935.

Gift of liquor.

It is illegal for any person or persons to offer malt, vinous or spirituous liquors as a gift to patrons who are the holders of paid admittance tickets to a place of amusement.

206 SCHOOLS

To Clyde Starrett, Sept. 30, 1935.

Detaching territory from district.

Territory of one school district may not be detached therefrom and attached to a contiguous district unless forty persons of school age reside in the original district.

207 TAXATION—Bank Stock

To T. Lee Witcer, Oct. 1, 1935.

Owned by R. F. C.

Bank stock owned by R. F. C. is not exempt from taxation.

Tax Commrs. v. Baltimore National Bank (June 16, 1935)
180 Atl. 260.

208 STORE LICENSE TAX

To J. A. Creamer, Oct 2, 1935.

“Used car lot.”

A Used Car Lot need not pay a store license when owned by a garage which is licensed, if sales of used cars are not made from the lot but only from the office of the garage,—the lot being used only for exhibition and display.

209 DAIRY COMMISSIONER

To H. D. Myers, Oct. 5, 1935.

Emulsified or homogenized milk.

Under Sec. 2, Ch. 65, S. L. 1933, all milk which is homogenized, emulsified or treated in any manner that will give the milk the appearance of containing more butterfat than it contains, must be labeled in letters not less than $\frac{1}{4}$ inch in height.

210 MEMBERS OF GENERAL ASSEMBLY

To. Governor Johnson, Oct. 5, 1935.

Incompatible offices.

Under Sec. 8, Art.V, State Constitution, a member of the legislature cannot during the time for which he has been elected, lawfully be appointed to fill a vacancy in a board of county commissioners.

211 TAXES**Drainage district taxes.**

October 8, 1935.

Mr. E. G. Clatworthy,
County Commissioner of Crowley County,
Olney Springs, Colorado.

Dear Mr. Clatworthy:

In your letter of September 20th, you inquire whether the County Commissioner may accept and receipt for the general property taxes due upon land, without at the same time requiring the payment of the Drainage District Taxes due thereon.

We are of the opinion that a careful reading of section 2172, Compiled Laws 1921, discloses the intention of the Legislature to have been that drainage district assessments should be severable from general property taxes. We call attention particularly to that part of the section which provides:

“That in case of sale of any lot or parcel of land, or any interest therein for delinquent drainage district taxes or delinquent drainage district and other taxes, * * *.”

The clear implication from this language is that general taxes may be paid, leaving the Drainage District Taxes unpaid.

The case of Interstate Trust Company v. Smith, 66 Colo. 525, is very much in point upon this question. In that case the Supreme Court of Colorado held that general property taxes could be paid separately from Irrigation District Assessments. This decision was based upon the fact that irrigation district assessments are special taxes levied for local improvements only.

Drainage District Assessments are also special taxes levied for local improvements only. We do not think that the statement found in Section 2172, Compiled Laws 1921, to the effect that said assessments shall be construed as an exercise of the police powers of the state, and not special taxes under the taxing power, can change the real nature of the imposition. However, if any effect were to be given to this provision the result would be that the Drainage District Assessment, being collected under the police power and other taxes being collected under the taxing power, the two impositions are altogether different in nature and clearly severable.

In this connection, it is pertinent to note that Section 2154, Compiled Laws 1921, requires the County Treasurer to collect and receipt for Drainage District Assessments "in the same manner and *at the same time* and upon the same receipt as is required in the collection of taxes upon real estate for county purposes."

This language is identical with that found in Section 1998, Compiled Laws 1921, relating to Irrigation District Assessments. This office many years ago took the position that this requirement was directory merely, and not mandatory.

Opinion No. 309, Attorney General Report, 1917-18.

Opinion No. 39, Attorney General Report, 1923-24.

In the case of Interstate Trust Company v. Smith, *supra*, we have found by an examination of the briefs filed in that case that it was vigorously argued that that provision made it mandatory upon the treasurer to require Irrigation District taxes and general taxes to be paid together. The court, as has been observed, held to the contrary and state officers are bound to follow the interpretation placed upon a state statute by our Supreme Court.

For that reason, we believe that the County Treasurer is justified in following the rule laid down in the Interstate Trust Company case, which permits him to accept and receipt for general taxes without requiring Drainage District taxes to be paid simultaneously. This in spite of the fact that the Federal Court in Moore v. Gas Securities Company, 278 Fed. 111, refused to follow this interpretation of the Irrigation District Act by the Colorado Court.

Yours very truly,

PAUL P. PROSSER,

Attorney General.

PIERPONT FULLER, JR.,

Assistant Attorney General.

212

SCHOOL LAW

To Inez Johnson Lewis, Oct. 9, 1935.

Course of study.

Ch. 18, S. L. 1935, concerning payment for Course of Study is constitutional. Citing many cases.

213

LIQUOR

To James H. Carr, Oct. 10, 1935.

Retailer selling to retailers.

To "sell at wholesale" is defined by Sec. 4, par. 9 of the Liquor Code to mean selling to any other than to the intended consumer of malt, vinous or spirituous liquors. Therefore a retailer cannot knowingly sell liquor to another retailer who is not the intended consumer thereof.

214 SALES TAX

To S. A. Schlesinger, Oct. 11, 1935.

Tax on Christmas cards.

Discussion of law with reference to collection of sales tax, upon taking orders and upon shipping C. O. D. to customer.

215 STATE TREASURER

To C. M. Armstrong, Oct. 11, 1935.

Powers of excise tax commissioner.

Upon re-examination of the question, we are of opinion that the position of Excise Tax Commissioner does not exist as an independent office, but as a subordinate division of the Department of Finance and Taxation, of which the State Treasurer is the executive head, with power to exercise immediate supervision, direction and control over the Commissioner, his assistants and employees.

216 MOTOR VEHICLES

To Chas. H. Gunn, Oct. 14, 1935.

Operator's and chauffeur's licenses.

Department must revoke license upon receiving record of conviction of offenses enumerated in Sec. 29, Ch. 122; and *may suspend* in instances enumerated in Sec. 30 (a) and *must suspend* upon receiving reports as provided in Sec. 9, Ch. 163. (Ch. 122, S. L. 1931, Ch. 163, S. L. 1935).

217 PUBLIC WORKS

To George M. Bull, Oct. 11, 1935.

Buildings at Colorado State Hospital.

The clause in the contract relating to landscaping, etc., does not mean that the architects shall do the actual work and pay the expense of landscaping, but only that they shall furnish plans or designs of landscaping that shall be harmonious and suitable in view of the type and character of the construction called for by the contract.

218 SALES TAX

To C. M. Armstrong, Oct. 15, 1935.

Partial or time payments of sales tax.

The Sales Tax Act plainly contemplates payments of taxes in cash only. In event of liquidation claim should be reduced to judgment.

219 FEES AND SALARIES

To I. B. Rogers, Oct. 21, 1935.

Justices of the Peace.

Under Sec. 7937, C. L. 1921, justices of the peace in justice precincts containing not less than 10,000 nor more than 13,000 in-

habitants, are entitled to receive an annual salary of \$1200.00, payable in monthly installments of \$100.00 each out of the general county fund of their respective counties. (See County Commrs. v. Straub, 75 Colo. 495 and Airy v. People, 21 Colo. 144).

220 LIQUOR LAW

To I. B. Rogers, Oct. 21, 1935.

Part-year licenses.

Where a liquor license is taken out during the course of a calendar year, the full amount must be paid and no reduction can be allowed or refund made because of the fact that a portion of the calendar year has already elapsed.

221 DELINQUENT TAX SALE

To I. B. Rogers, Oct. 21, 1935.

Must be held.

The statutory requirement of the annual tax sale is mandatory and county officers have no right to omit the holding of such sale.

222 LEGAL NEWSPAPER

To I. B. Rogers, Oct. 21, 1935.

A newspaper printed in a foreign language is not a legal newspaper within the meaning of our statutes concerning legal notices and advertisements.

223 SALES TAX LAW

To Chas. M. Armstrong, Oct. 21, 1935.

Five per cent expense allowance.

This 5% expense allowance is not by the statute segregated into monthly periods, but is allowed and computed over the entire period the law remains in effect; so that in cases of emergency it is lawful and proper in administering the act to exceed expenditure at the rate of 5% a month and recoup repayment by corresponding limitations below 5% in succeeding months.

224 STATE BONDS

To C. M. Armstrong, Oct. 21, 1935.

Payment of interest and principal on.

Where a valid levy has been made for a specific purpose, the proceeds thereof can lawfully be anticipated to the extent of the reasonable estimates of the amount they will bring into the treasury in due course.

225**SALES TAX**

To C. M. Armstrong, Oct. 21, 1935.

Remittances of less than 2 per cent.

Under Sec. 4, Ch. 189, S. L. 1935, all sales tax payers are required to remit the full 2% tax, regardless of the fact that the Treasurer's office has been temporarily unable to supply the number of tokens sought to be obtained by them; and the State Treasurer would not be authorized to accept in full payment of the taxes currently becoming due anything less than 2% of the taxable sales made by the respective taxpayers.

226**TAXES**

To Colo. Tax Commission, Oct. 21, 1935.

Exemption of Reservoir Co.

The irrigation works of the Twin Lakes Canal & Reservoir Co., which are located in Pitkin County, are exempt from taxation by virtue of the exemption contained in Sec. 3, Art. X of the State Constitution.

227**WESTERN STATE COLLEGE**

To Homer F. Bedford, Oct. 21, 1935.

Dormitory bonds.

The bonds issued for the erection of the dormitory at the Western State College are, by their express terms rendered payable only out of the revenues of the dormitory, not out of Maintenance Fund. The management of the institution may be allowed to borrow temporarily from the Maintenance Fund to pay an equal amount of the matured bonds, with the distinct agreement that the amount so borrowed must be returned to the Maintenance Fund within a prescribed period; but this is a matter to be determined by the Executive Council of the State.

228**CORPORATIONS**

To Jas. H. Carr, Oct. 21, 1935.

Not for profit.

Mutual Benefit Associations and Burial Associations distinguished.

Where associations, by articles of association, have so limited their expenses of management as to remove all opportunity for profit, the Secretary of State may legally issue a charter under the Non-profit Act.

229**SCHOOLS**

To Floyd W. Kelly, Oct. 11, 1935.

Inspection of boilers.

A school district is required to permit the annual inspection of boilers used in school buildings and to pay a fee of \$5.00 for each inspection.

230

ABSTRACTORS

To W. F. Ferrell, Oct. 22, 1935.

Certificate.

A licensed abstractor need not maintain a residence in the county where he is licensed to do business.

A clerk and recorder has no right to prepare abstracts, by virtue of the provisions of Sec. 2652, 14 C. L. Supp. 1932, in those counties wherein a licensed abstractor does business, merely because his residence or place of business is not maintained in such county.

231

TAXATION

To O. W. Ward, Oct. 22, 1935.

Where property has been assessed for several years but the taxes thereon have not been paid and the land has not been sold for non-payment of such taxes, the county treasurer should advertise and sell such property for the entire amount of taxes due and unpaid, and not merely for the current year's taxes.

232

SCHOOLS

To Inez J. Lewis, Oct. 22, 1935.

Dependent children.

Child transferred from State Home to a private home is eligible to attend school in district where he is living without tuition.

233

COUNTY TREASURER

To George Lerg, Oct. 24, 1935.

Charge for handling pension funds.

Under Sec. 7887, C. L. '21, the county treasurer shall charge and receive for handling moneys other than taxes on property, 1%; but Old Age Pension funds, being State funds, are turned over to and received by him in his capacity as "Treasurer of the County Pension Fund" and for that reason he is not entitled to deduct 1% for handling the Old Age Pension Fund.

234

CHIROPRACTORS

To E. B. Fulkerson, Oct. 24, 1935.

Licenses.

An applicant for a license who does not qualify under Secs. 8 and 9, Ch. 49, S. L. '33, can only be licensed as provided in Sec. 10 of the Act—that is, by an examination.

After suspension and revocation board can reissue license on majority vote.

235**IMPROVEMENT BONDS**

To Tora Slind, Oct. 24, 1935.

Payment of.

Under the provisions of Sec. 9502, C. L. '21, and page 622, S. L. '23, it is required that such bonds be paid in full in numerical order.

236**INSURANCE**

To Jackson Cochrane, Oct. 27, 1935.

Policy forms.

Sub-Sec. 8, Sec. 2516, C. L. 1921 requires that all policy forms shall contain "a table showing the amount of installments in which the policy may provide that its proceeds may be payable." The word "shall" followed by the words "be unlawful" is mandatory and not merely directory.

237**BOILER INSPECTION**

To Gene Veraldi, Nov. 4, 1935.

Inspection fees.

Current certificate of inspection may be refused where owner or agent refuses to pay delinquent inspection fees accrued over past years.

238**COURTESY PATROL**

To E. E. Wheeler, Nov. 4, 1935.

Appointment of technicians.

Law specifically requires technicians be taken from present Civil Service personnel.

239**SCHOOLS**

To R. H. McNeal, Nov. 5, 1935.

Health regulations.

School Board has power to exclude pupils who do not meet reasonable health requirements.

240**LIQUOR**

To Jas. H. Carr, Nov. 5, 1935.

Supplementary to opinion of Oct. 5 (attached).

A brewery holding a manufacturer's license as well as a wholesaler's license, is not restricted to the use and maintenance of two warehouses and one salesroom as provided by Sec. 17-c-1 of said Code. Sec. 17-4 specifically excepts breweries from such restriction.

241

INSURANCE

To Jackson Cochrane, Nov. 6, 1935.

Release of deposit.

Approving release of statutory deposit of American Life Insurance Company. Citing and distinguishing case of Cochrane v. Pacific States Life Co., 93 Colo. 462; Construing Sec. 2495, C. L. 1921.

242

RELIEF

To Gov. Johnson, Nov. 7, 1935.

Title to Sanitarium.

Sec. 4 (f) of Ch. 186, Regular Session Laws '35, affords ample authority to the Official Colorado Relief Committee to accept title to Cragmore Sanitarium on behalf of the State.

243

COUNTY FUNDS

To H. W. Zacheis, Nov. 7, 1935.

Investment of.

While the county treasurer may invest county funds in Home Owners' Loan Corporation Bonds, he could not accept such bonds as a pledge for the security of county funds. Sec. 1, Ch. 9, 2nd Ex. S. L. '33.

244

TAXES

To Wm. J. Christensen, Nov. 7, 1935.

Payment in cash.

County Treasurers may not accept warrants, county orders or other like certificates of indebtedness in payment of taxes. Referring to Secs. 6901, 7369 and 7412, C. L. 1921.

245

CHIROPRACTIC EXAMINERS

To Board of Chiropractic, Nov. 8, 1935.

Malpractice.

Sec. 11 of the Act provides that the Board may suspend or revoke a license upon a number of grounds—malpractice, unprofessional conduct, prescribing, compounding or administering drugs, etc.

The authorities contain many definitions of the term "malpractice" and each case must, to a great extent, depend upon the facts peculiar to it, in view of the well recognized rule that malpractice must be established by expert testimony.

246

MOTOR VEHICLES

To Chas. H. Gunn, Nov. 9, 1935.

Expiration of operator's license.

Whenever the term "year" or "years" shall be used in a statute, the year shall be taken to consist of 365 days (26 R. C. L. 731) or the preceding or succeeding 12 months. License issued in 1936 expires July 1, 1939.

People v. Eschman, 63 Colo. 227, 229.

247

TAXATION

To J. W. Tarlton, Nov. 12, 1935.

Undivided interest in property.

An undivided interest in property may be returned for separate assessment and taxation, sold and redeemed from tax sale upon payment of a ratable share of the sum required to redeem the whole, even though the whole may have been sold.

248

SALES TAX

To Earl M. Kouns, Nov. 12, 1935.

Purchases by State for relief purposes.

All merchandise purchased by the State or any county is exempt, whether the purchase by the county is made for the purpose of dispensing the merchandise to relief cases or not.

249

INSURANCE

To Jackson Cochrane, Nov. 13, 1935.

Attendance at conventions.

The Insurance Commissioner may lawfully accept invitation of Colorado insurance companies to attend Commissioners' conventions at companies' expense when the purpose is to safeguard the interests of policyholders of such companies. Sec. 2477, C. L. '21. Cited and held inapplicable.

250

OLD AGE PENSION ACT

To George Gibson, Nov. 14, 1935.

Resume of opinions.

Regarding residence requirements under 1933 Old Age Pension Laws.

251

BANK STOCK OWNED BY R. F. C.

To Omar T. Mallory, Nov. 18, 1935.

Taxation.

The matter of the exemption of such shares is before the U. S. Supreme Court, which will probably decide that they can-

not be taxed by the States. In the meantime it would not be proper for a county board of commissioners to adopt a resolution authorizing the county treasurer not to collect the taxes upon such shares of stock. The duty and responsibility of collecting taxes rests upon the county treasurer alone. He can collect and receive such taxes under protest, and if the Federal decision holds such taxes void, they can readily be refunded.

(Advisory—Copy in Bank Stock File).

252

TAXES

To W. F. McClure, Nov. 21, 1935.

Under Ch. 217, S. L. '35, the owner of land is entitled to redeem without interest or penalty, taxes that were delinquent thereon on August 1, 1934, even though the county had sold the certificate of purchase after May 1, 1935.

253

LIQUOR LAWS

To Theodore Epstein, Nov. 21, 1935.

Audit of records of licensee.

That part of paragraph (b), Sec. 8, Ch. 142, S. L. '35, providing that a licensee shall pay the expense of any audit of the books and records of such licensee that may be required by the State Licensing Authority, is in all respects valid and constitutional and will be enforced by the Attorney General's office until declared unconstitutional by the Supreme Court.

254

SCHOOLS

To Katherine M. Burnell, Nov. 22, 1935.

Dismissal of teacher.

A teacher is entitled, under the law, to notice, hearing and opportunity to defend charges of incompetency before dismissal.

255

NEWSPAPERS

To W. E. Clark, Nov. 22, 1935.

If no newspaper is qualified as a legal publication in a county, legal advertisements can properly be published in a newspaper printed in an adjoining county which has a general circulation in the district.

256

TAXES

To John R. Seaman, Nov. 22, 1935.

Refund of tax paid under protest.

The Tax Commission should approve refund granted by Board of County Commissioners to property owner who tendered delin-

quent taxes prior to Dec. 31, 1935, without interest and penalties but who was forced to pay interest and penalties on such taxes under protest and who thereafter applied to the County Board for a refund which was granted by said County Board.

257 **TAXES**

To H. A. Lennartz, Nov. 22, 1935.

Redemption by mortgagee.

A mortgagee may redeem a tax certificate held by the county without paying subsequent taxes, and may do so without payment of interest and penalties, as provided in House Bill No. 200, Ch. 217, S. L. 1935, even though subsequent taxes have been endorsed on the certificate held by the county.

258 **LIQUOR**

To Geo. E. Saunders, Nov. 26, 1935.

Alcohol for manufacturing purposes.

Under paragraph (a) Sec. 23 of Ch. 142, S. L. 1935, a tax of 20 cents a pint or fraction thereof must be collected on all spirituous liquors sold, offered for sale *or used* in this state and there is no reason to believe that the legislature intended to exempt from taxation spirituous liquors used for manufacturing purposes.

259 **LIQUOR**

To Geo. E. Saunders, Nov. 27, 1935.

Granting of licenses.

In view of the provision of the Liquor Laws to the effect that the State licensing authority is authorized to consider the desires of the inhabitants of a community in the matter of the issuance of State Liquor Licenses, the establishment of a regulation to the effect that no such license shall be issued without the previous consent of the local authorities, would be reasonable and lawful.

260 **UNIVERSITY OF COLORADO**

To Wm. S. McNary, Nov. 27, 1935.

Compromise of claim held by University.

The Board of Regents of the State University have authority, under the Constitution, to accept partial payments of warrants in full satisfaction thereof where the collection of such warrants is doubtful and the situation of the county is such that there is little possibility of their being paid in full.

261 **OFFICERS**

To Dr. C. A. Lory, Nov. 27, 1935.

Member of General Assembly.

The appointment of a State Legislator (member of the General Assembly) as Editor of Publications for the Experiment Sta-

tion connected with the Agricultural College would not be in contravention of Sec. 8, Art. V of the State Constitution, nor of Sec. 7, Ch. 37, S. L. 1933.

262**HIGHWAY DEPARTMENT**

To Gov. Johnson, Nov. 29, 1935.

Funds of.

Under Sec. 1411, C. L. 1921, as amended by S. L. 1935, pages 465-467, the expense of establishing and maintaining a testing laboratory for the State Highway Department may lawfully be paid out of any available money in the State Highway Fund or in the Highway Supplementary Fund.

263**SCHOOLS**

To Ben S. Wendelkin, Dec. 2, 1935.

Levies for teachers' pension.

The 1936 levy for Teachers' Pension Fund may be increased beyond the 5% limitation under the authority of Ch. 198, S. L. 1935.

264**LIQUOR**

To M. W. Leckenby, Dec. 2, 1935.

Licenses.

A liquor license terminates with the death of the licensee. Before the legal representative of the deceased would be entitled to a State liquor license, he must show an order of the court in which the estate of decedent is being administered, authorizing him in the best interests of the estate to continue the business conducted by the licensee prior to his death.

265**LIQUOR CODE**

To Geo. E. Saunders, Dec. 2, 1935.

Clubs, hotels, needs of community.

1. The liquor law does not permit licensees under Sec. 2 (club license) to sell liquors in original packages or original containers. And they may sell liquor by the drink only to members of such club and their guests within the premises of such club.

2. Malt, vinous and spirituous liquors may not be sold in unbroken packages by hotels and restaurants.

3. The liquor licensing department is authorized to make reasonable investigation as to the needs of a particular community before granting a permit for the sale of liquor in that community.

266

RELIEF

To Inez J. Lewis, Dec. 3, 1935.

County Treasurer.

Funds deposited with the county treasurers by Works Progress Administration, under the provisions of the Emergency Relief Appropriation of 1935, are trust funds, and county treasurers are not authorized to deduct 1% as fees from such deposits.

267

SCHOOL BUSES

To E. W. Thomson, Dec. 3, 1935.

Flares on stalled busses.

The statutes do not require the use of flares for school busses which carry passengers.

268

LIQUOR

To Geo. E. Saunders, Dec. 4, 1935.

Sales to Italian Consul.

By virtue of a treaty between Italy and the United States, consular representatives of that kingdom resident in the United States, are exempt from the payment of all taxes, both Federal and State. Therefore, the Italian Consul at Denver is not liable for the payment to the State of Colorado of any tax on account of purchases made by him in this State of malt, vinous or spirituous liquors.

Recalling former opinion of Oct. 31st, '35.

269

CHIROPRACTIC EXAMINERS

To Dr. D. H. Burwell, Dec. 4, 1935.

Since the Board is specifically given the power to make rules and regulations to carry out the provisions of the act, and since the law specifically makes unprofessional or dishonorable conduct grounds for revocation of license, the Board has power to define these terms within reasonable limits.

270

LIQUOR LAW

To G. E. Saunders, Dec. 6, 1935.

Right of brewery to operate branch houses.

A brewery cannot legally operate its "branch houses" unless and until it procures a wholesaler's beer license for each of them. (Overruled by decision of District Court).

271

DIRECTOR OF MARKETS

To Ben. H. King, December 6, 1935.

Collection of fees.

The Act clearly indicates that two fees are contemplated—one for sampling fruit and an additional fee for issuing a shipping certificate. If it is necessary for inspectors to obtain samples from orchards and take them to a laboratory, a reasonable fee may be charged for this service, which is clearly a part of "sampling".

272

FEES AND SALARIES

To A. G. Maine, December 6, 1935.

Sheriff's mileage.

Under Sec. 1 of Ch. 151, S. L. 1933, no state, county or precinct officer can be allowed mileage fees in excess of eight cents per mile for each mile actually and necessarily traveled on official business.

273

NOTARIES PUBLIC

To J. Paul Hill, December 10, 1935.

Are county officers.

A notary public, while holding his office by appointment of the governor, can exercise the functions thereof only in the county for which he is appointed.

See 9 Colo. 628, 629; Hill v. Bacon, 43 Ill., 477.

274

LIQUOR

To Geo. E. Saunders, December 11, 1935.

Definitions of "meal" and "food."

Since the word "meal" has been adequately defined by the General Assembly in Sec. 4, paragraph (s) of Ch. 142, S. L. '35, there is no occasion for the liquor licensing authority further to define said word "meal" by regulation.

275

LIQUOR

To Geo. E. Saunders, December 11, 1935.

Sales by government and railroads.

Under paragraphs c and d of Sec. 23 of the Liquor Code the Secretary of State is empowered to make reasonable regulations covering the need for stamps by the Federal Government in selling confiscated liquors, and railroads that have to take over liquor on account of breakage in shipment, etc.

276

ABSTRACTORS

To D. B. Graham, December 12, 1935.

Charges for services by non-licensees.

Sec. 1, Ch. 57, S. L. 1929 applies only to one who makes, compiles or sells *abstracts of title*, and would not apply to one who searches the records, unless the person who makes such search certifies the correctness of his information or purports to give a complete history of the title.

277

LIQUOR

To Geo. E. Saunders, December 13, 1935.

Credit and refund.

Under Sec. 9 of Ch. 142, S. L. '35, "credit shall be given for the unexpired portion of any existing state license." There is no provisions in said section or elsewhere for a refund of any monies over and above the new license fee.

278

TAXATION

To Tax Commission, December 13, 1935.

Change in levy.

The Supreme Court has held that statutes fixing the time within which county levies are made are directory rather than mandatory, and where a mistake has been made in a levy the Board has jurisdiction to correct it, within such time as will enable the taxes to be extended by or shortly after the first of January of the succeeding year.

279

MOTOR VEHICLES

To Harry C. Johns, December 13, 1935.

Hard rubber tires.

Under Ch. 164, S. L. 1935, the State law prohibiting the use of hard rubber tires on the highways of this State is applicable to the streets of home-ruled cities as well as to other highways in the State.

280

HIGHWAY PATROL

To J. J. Marsh, December 14, 1935.

Accident reports.

Under Sec. 68, Ch. 164, S. L. '35, reports on file with the Motor Vehicle Department may be examined by officials and other persons only as permitted by said section.

Accident reports filed by patrolmen with the Supervisor of the State Highway Courtesy Patrol may be examined by any officer or interested person, as provided in Sec. 8 of Ch. 125, S. L. '35.

281

BUILDING AND LOAN

To A. O. Johnson, December 17, 1935.

1. Home Owners' Loan Corporation bonds received in satisfaction of delinquent loans are "receipts" subject to withdrawal disbursements in accordance with the requirements of Sec. 6, Art. V, B. & L. Code of 1933.

2. Associations must recognize preference accorded withdrawing members in respect to monthly net receipts, over use of such funds for loan or investment purposes.

Wolfe et al. v. Conkey Ave. S. & L. Assn., 27 N. Y. S. 44.

282

BUILDING AND LOAN

To A. O. Johnson, Dec. 17, 1935.

1. Commissioner may approve equitable proration of expenses where state and federal-chartered associations are operated jointly.

2. Administrative order by Federal Home Loan Bank Board, ordering State associations so operated, to accept no further new business is an unconstitutional intermeddling by federal authorities in purely a state matter and violates the 10th amendment to the Federal Constitution.

283

BUILDING AND LOAN

To A. O. Johnson, December 18, 1935.

Where directors of association deny withdrawing members preference accorded them by Sec. 6, Art. V of the B. & L. Code in monthly net receipts, a by-law provision in existence prior to 1933 and which cut off right of withdrawing members to share in dividends, may be ineffective.

Frederick v. Mutual B. & L. Inv. Co., 191 N. E. 729, 128 O. St. 474.

284

BANKING LAW

To L. McWhinney, December 19, 1935.

Escrow agreement securing deposit of funds.

The State Bank Commissioner would have no real reason to object to the entering into such an agreement by a bank or trust company organized under the laws of this State, but while it would be lawful for a county treasurer to deposit county funds in a State bank having a trust department, or with a trust company doing a banking business under the form of agreement submitted, yet in the event of a wrongful withdrawal of the pledged securities or their misappropriation by the officers of the institution, a question might arise as to whether or not the county treasurer in allowing the securities to remain in the same institution that held

the deposit of funds, had exercised the high degree of diligence that the courts would probably hold he is bound to exercise.

Under the statutes of this State the respective district attorneys rather than the attorney general are the legal advisers of the county treasurer who must, under the advice of his district attorney, determine whether or not he is exercising the proper degree of diligence in depositing county funds in any particular bank or trust company.

285

LIQUOR LAW

To G. E. Saunders, December 19, 1935.

Refund under Medicinal Liquor Law.

The law pursuant to which such wholesale medicinal liquor license was issued, contained no provision authorizing any official to refund the amount of any fee in any case where the applicant after receiving the same decided not to exercise the privilege conferred by such license; and in the absence of any legislative authorization therefor, no refund can legally be made.

286

BUILDING AND LOAN ASSOCIATIONS

To A. O. Johnson, December 26, 1935.

Delinquent taxes on property of impaired associations.

Sec. 12, Art. VIII, B. & L. Code, '33, authorizes the Commissioners in charge of liquidation of impaired associations to borrow money to pay delinquent taxes on properties of the associations. Apart from statutory authority, such power would be implied as necessary for the protection of assets.

287

PUBLIC FUNDS

To C. C. Hezmalhalch, December 26, 1935.

Expenses for co-operation with U. S. Bureau of Reclamation.

The language used in Ch. 57, S. L. '35, is not broad enough to permit the expenditure of funds appropriated thereby, to the payment of services and expenses of employes who are not actually employed by the State of Colorado, but would be making Snow Surveys under direction of Federal Bureau.

288

HAIL INSURANCE

To Hail Insurance Department, December 26, 1935.

Reduction of tax by County Board.

Sec. 5, Ch. 107, S. L. '31, provides that the district indemnity tax (hail insurance) shall be a general tax and shall be subject to all the provisions of law relating to general taxes except as specifically provided otherwise. Such tax is therefore subject to reduction by the board of county commissioners in accordance with the provisions of Sec. 7422, C. L. 1921.

289 LIQUOR LICENSE TAX

To C. M. Armstrong, December 27, 1935.

Allocation of proceeds of tax.

Under Sec. 24, Ch. 142, S. L. '35, the proceeds of said check should be distributed; 5% to the expense account of the Secretary of State's office, and 95% to the Old Age Pension Fund.

290 SALES TAX

To Tom L. Pollock, January 3, 1936.

Tangible property of national banks.

The State of Colorado cannot exact a tax of 1% on sales of tangible personal property, services, substances and things of National banks,—concurring with opinion rendered by Attorney General of Missouri and citing Sec. 5291 U. S. Rev. Stats.

291 INSURANCE

To Frank Seydel, January 6, 1936.

Grange Mutual Fire Ins. Co.

An insurance company organized under the laws of 1883 exists as a de facto corporation by virtue of its failure to comply with legislation passed subsequent to the date of its incorporation.

292 DOCTORS

To James M. Noland, January 7, 1936.

Government physician.

Under Sec. 4537, C. L. 1921, a Government physician is exempt from the licensing section of the Medical Act of this State, *only when acting as an officer of the Government.*

293 MOTOR VEHICLE TAXES

To L. F. Mitchell, January 9, 1936.

Transient vehicles.

Personal property which is within the borders of a state for a merely temporary purpose or which is in transit through the state does not acquire a situs for taxation and is not taxable in the State.

294 BUILDING AND LOAN

To A. O. Johnson, January 10, 1936.

Transfer of assets.

Transfer of assets of an association for the purpose of liquidation and dissolution must be approved by the B. & L. Department as well as by written approval of persons holding the aggregate two-thirds in book value of outstanding stock and shares of the association. (Sec. 12, Art. II, Code of 1933).

295

INDUSTRIAL COMMISSION

To Industrial Commission, January 10, 1936.

Wages of laborers and mechanics on State contracts.

The schedule fixed by the Commission on Sept. 27, 1933, as a fair wage to be paid by all contractors on State Highway work, pursuant to S. B. 2 and H. B. 26 & 29, Ex. Sess. 29th G. A., does not apply to laborers and mechanics employed by contractors on Public Works Projects of the State, under H. B. 101, 29th G. A.

The authority of the Industrial Commission to adjudicate disputes as to wages can be invoked only after adjustment by the contracting officers fails.

296

TRADING STAMPS

To R. H. Kenney, January 13, 1936.

The decisions of the Supreme Court of our State have rendered null and void the several legislative attempts to prohibit the use of trading stamps or similar sales stimulating devices when no element of chance, gambling or lottery is connected with the plan.

Cross v. People, 18 Colo. 321.

Denver v. Frueauff, 39 Colo. 20.

Denver v. United Cigar Stores, etc., 68 Colo. 363.

Denver v. The Post P. & P. Co., 70 Colo. 166.

Opinion No. 303, Rept. of Atty. Gen'l, 1921-22.

297

MOTOR VEHICLES

To Governor Johnson, January 13, 1936.

Licensing of operators and chauffeurs of motor vehicles.

1. Examination and licensing of operators and chauffeurs of motor vehicles in the City and County of Denver is to be administered directly by the Division of Motor Vehicle Supervisor who acts under the supervision of the administrative head of the Department of Finance and Taxation (State Treasurer).

2. In the other counties of the State the respective county clerks are vested with authority to administer the Act insofar as it relates to the licensing of owners, operators and chauffeurs.

3. The Motor Vehicle Supervisor has authority through the respective county clerks to appoint chiefs of police or other officials to act as examiners and to make reports within 24 hours to the county clerk and the Department,—the probable intent being to make examinations after accidents (Sec. 16-b of the Act).

4. Appointments of examiners by the county clerks must be made subject to the approval of the Department.

298

BUILDING AND LOAN

To A. O. Johnson, January 13, 1936.

Mutualization.

Mutualization of permanent stock building and loan associations may be effected by a surrender of stock and a transfer of credit to reserve for contingent losses, provided the stock is fully paid. Articles of incorporation must be amended. Approval of shareholders, while not a legal necessity, is advisable.

299

PUBLIC FUNDS

To H. F. Bedford, January 14, 1936.

Transfer of funds, mental defectives home.

In order that the funds available from the Federal Government may be forthcoming for repairs, improvements and replacements at the State Home for Mental Defectives, it is, of course, necessary to match those funds, and rather than have the entire program delayed, it would seem proper to transfer \$3,000 from the appropriation for salaries and maintenance to the appropriation for buildings, repairs and replacements, as provided for in Ch. 63, S. L. '35.

300

MOTOR VEHICLES

To J. J. Marsh, January 15, 1936.

Registration.

Any domestic corporation, although engaged in interstate commerce, should be required to register its motor vehicles in the county of this State where its principal office is kept, as specified in its articles of incorporation.

301

AGRICULTURAL COLLEGE

To Chas. M. Armstrong, January 20, 1936.

Continuing appropriations.

Since Sec. 8061, S. L. 1921, contains no limitation upon the transfers intended to be authorized, from the General Fund to the special fund mentioned, that statute does not constitute a valid appropriation, and the institution concerned should seek and obtain from the General Assembly, such specific appropriations as may be necessary to comply with the intentment of the statutes here quoted, providing for a yield of 5% in income.

302

COLORADO STATE FAIR

To John F. Maguire, January 20, 1936.

Tax levy on foreign securities.

Ch. 67, S. L. 1925, purporting to provide a tax levy for the maintenance, operation and support of the Colorado State Fair at Pueblo, is clearly unconstitutional.

303

RELIEF

To Gov. Ed C. Johnson, January 24, 1936.

Elaborate 24-page opinion upon validity of former Social Security Plan for Colorado. (Opinion rejected by Federal Government and Governor called Special Session which drafted new laws).

304

MOTOR VEHICLES

To Chas. H. Gunn, January 27, 1936.

Constitutionality of taxing act.

Requiring car owners to present a tax receipt before securing license or certificate of title, is unconstitutional.

An act which is amended by one house of the General Assembly cannot become a law unless the amendment is concurred in by the other house. Both houses must pass the whole act.

305

CREDIT UNIONS

To Grant McFerson, January 31, 1936.

May invest surplus funds in U. S. Savings Bonds.

1. Credit unions may lawfully invest their surplus funds in U. S. Savings Bonds which are subject to redemption on sixty days notice.

2. When a member is expelled or withdraws from a credit union, any money he has deposited with the union, or paid on account of shares should be returned to him as funds become available for that purpose.

306

MOTOR VEHICLE LAW

To Colorado Tax Commission, January 31, 1936.

Tax on transitory vehicles.

Motor vehicles of foreign states making occasional trips into this state do not acquire situs for taxation and are not taxable in this state. The same is true of the vehicles of motor carriers domiciled in other states, making occasional trips into this State, but that do not operate into or out of the State on regular schedule.

Citing and discussing statutes and cases.

307

MOTOR CARRIERS

To Colorado Tax Commission, January 31, 1936.

Taxation of motor carriers.

1. All motor vehicle carriers and private carriers by motor vehicle operating over regular routes or between fixed points and having a continuity of business in two or more counties are "public utilities" for purposes of taxation, may be assessed by the Tax

Commission under Secs. 7361 and 7362, C. L. '21, and required to pay general property taxes, regardless of the state of domicile.

2. All motor carriers of the above mentioned classes not operating over regular routes or between fixed points, when domiciled within this State, should be assessed in the county of their residence.

3. Motor carriers of all classes making only occasional trips into this State, when domiciled in other states, have acquired no situs for taxation and are not subject to taxation in this State so long as their operations are occasional and irregular.

308

TAXATION

To Thos. M. Warner, February 11, 1936.

If items of property are separately assessed, the taxes thereon may be separately paid. See Corpus Juris 61, page 966.

309

BOXING COMMISSION

To W. L. Morrissey, February 20, 1936.

Evasion of 5% tax by patriotic organization.

No organization has the right to enter into any agreement, oral or written, that has for its object the evasion of the required tax.

310

BOXING COMMISSION

To W. L. Morrissey, February 20, 1936.

Bond of promoter.

1. The \$2,000 bond required under the law does not cover payment of salaries of the promoter or the referee.

2. The Board has the right to collect the 5% tax on the advance sale of tickets as gross receipts.

3. The Board would have the right to require military organizations to file a bond.

4. The bond required does not cover payment of indebtedness incurred by a promoter.

311

LIQUOR

To M. W. Leckenby, February 24, 1936.

License to minors.

Under no circumstances should a liquor license issue to an applicant under the age of 21 years, either under Ch. 142 or Ch. 82, S. L. '35.

312 LOTTERIES—INSURANCE

To Jackson Cochrane, February 26, 1936.

“Cash Night Awards”

So-called contracts of guaranty intended to protect registrations for “Bank” or “Cash Night Awards” against loss for failure to respond to name called, are not contracts of insurance, but mere wagering contracts, forbidden by the lottery laws of Colorado.

Citing Joyce on Insurance, p. 1957.

Lucena v. Crawford, 13 Eng. Rul Cs, p. 150.

Cross v. People, 18 Colo. 321.

313 MOTOR VEHICLE LAW

To G. H. Bradfield, March 3, 1936.

Registration.

Dump wagons and like motor vehicles used in road building and repairing roads and highways, and capable of transporting goods are trucks within the meaning of Ch. 122, S. L. 1931 and must be registered. Fire-fighting equipment specifically exempt.

314 SECURITIES

To A. J. F. Schepp, March 4, 1936.

Investment Contract Deposit Fund.

The Investment Contract Deposit Fund provided for by Ch. 84, S. L. Colo., 1933, is intended for the sole protection of residents of this State. No credit is allowed for funds deposited by other states.

315 STATE COMPENSATION INSURANCE

To Industrial Commission, March 5, 1936.

Cancellation after 20 days.

A policy with the State Compensation Insurance Fund is automatically cancelled by the provisions of Sec. 133 of the Act, and no entry to that effect on the records of the Fund is necessary.

316 INSURANCE

To Jackson Cochrane, March 6, 1936.

Mutual non-profit association.

Mutual non-profit associations, providing death benefits to members, does not fall within the terms of the Fraternal Societies Act where it does not operate under a lodge system with ritualistic form of work and representative form of government. Only escape from the deposit requirement of the Insurance Law lies in incorporation under the Not-for-Profit Statute.

317 LIQUOR

To R. D. Dexheimer, March 6, 1936.

Local option election.

Under Sec. 40 of the Election Laws, as amended to Jan. 1, 1934, a special election on the question of Local Option can properly be held on the same day as the general election. The rule seems to be general that there is no constitutional objection to the submission of two or more propositions to the vote of the people at the same time.

20 C. J., page 96.

318 IRRIGATION LAW

To Governor Johnson, March 7, 1936.

Proposed statute unconstitutional

A statute providing in substance that a prospective water-user may make a filing in the office of the State Engineer and thereby preempt a superior right to annually appropriate and apply water to beneficial uses at any time within a period of 60 years after such filing, would be violative of Sec. 6 of Art. XVI of the State Constitution.

319 FEES AND SALARIES

To J. H. Thomas, March 7, 1936.

Salary of appointee to fill vacancy.

An appointee to fill a vacancy in a public office draws his salary in accordance with the laws in effect when he takes office.

Citing *McKinney v. Northumberland Co.*, 75 Pa. Sup. 581.

320 BUILDING AND LOAN

To A. O. Johnson, March 9, 1936.

Endorsement of deposited securities.

Securities deposited with the Building and Loan Department should be endorsed to the State Commissioner of Building and Loan Associations, or successors.

321 MOTOR VEHICLES

To Chas. H. Gunn, March 9, 1936.

Federal truck drivers.

The driver of a Government-owned truck, while officially employed is not subject to state laws requiring drivers' registration cards (*Johnson v. Maryland*, 256 U. S. 51). This, however, does not exempt such drivers when using privately-owned car or truck, nor when operating a Government-owned car or truck not on official business.

322

CHAIN STORE LICENSE TAX

To Jas. W. Creamer, March 9, 1936.

Salvation Army work.

The places where the Salvation Army carry on their work of rehabilitation are not stores within the meaning of the Store License Act, and are not subject to tax.

323

TAXES

To James M. Noland, March 11, 1936.

Bank stock held by RFC, assessment of.

In the case of *Gale v. Statler*, 47 Colo. 72, 77, 79, our Supreme Court has recognized the rule that omitted property must be assessed in such manner as to afford to the taxpayer an opportunity for review.

Cent. Ga. Ry. Co. v. Wright, 207 U. S. 127, 137, 138;
12 Am. & Eng. Ann. Cases, b458.

324

MOTOR FUEL TAX

March 16, 1936.

State Highway Courtesy Patrol,
Denver, Colorado.

Interstate commerce.

Gentlemen:

You have asked our opinion as to whether the excise tax of 4c per gallon on motor fuel, as provided for in subsection (b) of Section 2, Chapter 170, S. L. 1935, should be imposed and collected from those motor vehicle carriers engaged wholly in interstate commerce.

The Motor Fuel Excise Act of 1935 amends the Motor Fuel Excise Act of 1933.

Section 2, Subsection (b) Chapter 170, S. L. 1935, is as follows:

“(b) Every person who shall use in this State for propelling a motor vehicle on the public streets or highways, or import into this State for use or sale in this State any motor fuel on which a licensed distributor has not paid or is not liable for the tax hereinbefore imposed, shall be liable for and shall pay to the State Treasurer an excise tax of four (4) cents per gallon or fraction thereof upon all such motor fuel so used or imposed for use or sale in this State, on or before the twenty-fifth (25th) day of the calendar month following the month in which such motor fuel was used or imported, and shall render at the time of the payment of such tax an itemized statement under oath to the State Treasurer, on forms provided by

said Treasurer, of all such motor fuel so used or imported during the calendar month in question. Provided, however, that a person operating a touring car into this State may bring into this State for the operation of such touring car only not more than ten (10) gallons of motor fuel in the ordinary fuel tank attached to such touring car without being liable for the tax on such motor fuel; likewise, any person operating a motor truck or motor bus into this State may bring into this State for operation of such motor truck or motor bus only not more than ten (10) gallons of motor fuel in the ordinary fuel tank attached to such motor truck or motor bus without being liable for the tax on such motor fuel. Provided, further, that in event of a disagreement between the operator, driver or owner of any vehicle, truck or bus, and any officer or inspector of this State, regarding the gallonage contained in the ordinary fuel tank of any vehicle*traveling upon the highways, the operator, driver, or owner shall be required, at his own expense, to prove to the satisfaction of the officer or inspector the gallonage his ordinary fuel tank contains, and in event it exceeds that exempted by law, he shall be required to pay the tax on any additional gallonage then and there, securing a receipt from the officer or inspector dealt with. The officer or inspector may require, in event of further argument, that the vehicle be driven to the most convenient place where definite measurements can be made. Provided, further, that when any such motor fuel is shipped from a refinery in a carload lot, the quantity of such motor fuel and amount of tax thereon shall be computed in the same manner as hereinbefore provided for in case of a distributor."

Section 17, Chapter 140, S. L. 1933, provides:

"No provision of this Chapter shall apply or be construed to apply to Interstate Commerce."

It will first be noted that the tax in question is not a property tax, but rather a privilege tax upon the right to sell or use the gasoline.

The Supreme Court of the State of Colorado in passing upon a previous gasoline excise statute, said in the case of *People v. City and County of Denver*, 84 Colo. 576, 272 Pac. 629:

"It is not a tax upon the gasoline, but on the right to sell it, offer it for sale or use it to propel motor vehicles."

Citing: *State v. Camp Sing*, 18 Mont. 128, 44 Pac. 516; *Ex parte, Shaw*, 53 Okla. 654, 157 Pac. 900.

“The tax in question is an excise tax, and not a tax on property, real or personal.”

Citing: *Altitude Oil Co. v. People*, 70 Colo. 452, 202 Pac. 180.

All of the funds realized from the tax in question, less refunds and expense of administration, is allocated for highway construction, maintenance and repair.

Sec. 10, Ch. 140, S. L. 1933.

Ch. 93, S. L. 1935.

“The purpose of the statute is plain, i. e., to collect from the users of motor vehicles a fund which shall be expended to maintain the roads which are so largely used by such vehicles.”

Altitude Oil Co. v. People, Supra.

That a state may exact compensation for the use of public highways, maintained by it, has been settled in numerous cases.

Red Ball Transit Co. v. Marshall, 8 F. (2) 635, Ohio.

Continental Baking Co. v. Woodring, 55 F. (2) 347, Kansas.

Prouty v. Coyne, 55 F. (2) 232, S. Dak.

Grolbert v. Board of Commissioners, 60 F. (2) 321.

Consolidated Freight Lines v. Pfost, 7 F. (Sup) 629 Idaho, 1934.

State v. Goeson, 262 N. W. 70.

Aero Mayflower Transit Co. v. Georgia P. U. C., 55 Sup. Ct. 709 aff. 176 S. E. 487.

Kane v. New Jersey, 37 Sup. Ct. 30, Ann. Cases 1912 D. 237.

Hendrick v. Maryland, 235 U. S. 610, 35 Sup. Ct. 140, 59 L. Ed. 385.

Interstate Transit Co. v. Lindsey, 51 Sup. Ct. 380, Tenn.

The fact that a person is engaged wholly in interstate commerce does not exempt him from the payment of excise taxes, which are expended for the construction, maintenance and repair of public highways.

Thus in the case of *Sprout v. City of South Bend, Indiana*, decided by the Supreme Court of the United States, and reported at 48 Sup. Ct. 502, 277 U. S. 163, we find this language by Mr. Justice Brandeis:

“It is true that a state may impose, even on motor vehicles engaged exclusively in interstate commerce, a reasonable charge as their fair contribution to the cost of constructing and maintaining the public highways.”

Citing: *Hendrick v. Maryland*, 235 U. S. 610, 622;

Interstate Busses Corp. v. Blodgett, 276 U. S. 245, 48 Sup. Ct. 230.

In the case of *Continental Baking Company v. Woodring*, supra, it was held that the State may require private motor carriers, although non-residents and engaged exclusively in interstate commerce, to contribute to the cost and upkeep of highways.

Similar decisions are found in the cases of

Interstate Transit Co. v. Lindsey, 51 Sup. Ct. 380, Tenn.

Prouty v. Coyne, 55 F. (2) 289, S. Dak.

State v. Goeson, 262 N. W. 270.

Consolidated Freight Lines v. Pfof, 7 F. Supp. 629.

The only conclusion which can be drawn from the foregoing cases, is, that a state may exact reasonable compensation for the use of state highways, and that persons engaged in interstate commerce are not exempt from the payment of compensatory excise taxes.

That a state may impose more than one form of tax for the use of the highways was decided in the late case of *Interstate Busses Corp. v. Blodgett*, 48 Sup. Ct. 230, 276 U. S. 245; 72 Law Ed. 551, aff. 19 F. (2) 256. The corporation alleged that in addition to the mileage tax complained of, it was paying an additional excise tax on gasoline. Mr. Justice Stone, speaking for the court disposed of this objection in these words:

“That appellant is already contributing to highway maintenance is not in itself significant, for the state does not exceed its constitutional power by imposing more than one form of tax as a charge for the use of its highways, in interstate commerce.”

Excise taxes on the sale or use of gasoline have been upheld as valid even tho the fuel was used to propel vehicles engaged in interstate commerce. It was held in the case of *Edelman v. Boeing Transport Co.*, 53 Sup. Ct. 591, that a State tax on the use of gasoline for propelling an airplane was valid, although ultimate function was to generate power for interstate commerce.

In the case of *Varney Air Lines, Inc., v. Babcock*, 1 F. Supp. 687, the petitioner was an interstate operator of an airline. In the operation of its business it imported into the State of Idaho large quantities of gasoline which large portions were used solely to propel its aircraft. Petitioner objected to paying the state excise tax of 5 cents per gallon on the gasoline so imported, alleging that such tax was a direct burden upon interstate commerce.

Judge Cavanagh speaking for the statutory three-judge court said at page 689:

“There would seem to be no question of the right of the state or owner of a facility used by one, although engaged in interstate commerce, to make a charge upon the person who uses it where the amount of the charge be reasonable and fair as to the amount of the use made of

the facility: *It does not constitute a burden on interstate commerce.* The amount of the charge and *the method of collection* are primarily for determination by the state. *Hendrick v. Maryland*, 235 U. S. 610, 35 Sup. Ct. 140, 59 L. Ed. 385; *Postal Telegraph Cable Co. v. City of Richmond*, 249 U. S. 252, 39 Sup. Ct. 265, 63 L. Ed. 590. As somewhat parallel to the tax here, *the state may levy a tax with respect to the exaction of a gasoline tax as compensation for use of highways by busses and trucks engaged in interstate traffic.* *Interstate Transient Co., Inc., v. Lindsey*, 283 U. S. 183, 51 Sup. Ct. 380, 75 L. Ed. 953. The tax here is allocated to the purpose of furnishing and maintaining airports and air navigation facilities which the plaintiff uses. Therefore under the facts and the principle as stated the tax imposed by the act and required to be paid by the plaintiff does not burden interstate commerce.”

Decisions similar to the above quoted may be found in the cases of

Central Transfer Co. v. Com. Oil Co., 45 F. (2) 400.

State v. City of Monroe, 149 So. 541, 177 La. 983.

State v. Tri-State Transit Co., 155 So. 233, 179 La. 811.

Grobert v. Board of Commissioners, 60 F. (2) 321.

Pan-American Pet. Co. v. Alabama, 67 F. (2) 590.

It is our opinion that Section 2, sub-section (b), Chapter 170, 1935 Session Laws is a lawful and valid exercise of the right of the State to exact fair and reasonable compensation for the use of its highways, and that the tax in question is not an undue burden upon Interstate Commerce.

Yours very truly,

PAUL P. PROSSER,
Attorney General.

WALTER F. SCHERER,
Assistant Attorney General.

325

LIQUOR

To M. W. Leckenby, March 19, 1936.

A person engaged in a wholesale liquor business may not engage in the business of handling soda fountain and beer equipment. (Par. 2, Sec. 14, Ch. 142, S. L. 1935).

326

COUNTY COMMISSIONERS

To G. S. Hallen, March 19, 1936.

Removal from district.

If a county commissioner removes from his district the remaining members of the county board shall certify that fact to

the Governor, who shall appoint a person to fill the vacancy. The question of abandonment of the old and adoption of a new residence is largely a matter of intention, to be ascertained either through admissions, declarations or acts of the person.

327 **LIQUOR LAWS**

To G. E. Saunders, March 19, 1936.

License in Garden City should be denied.

328 **WATER RIGHTS**

To Gov. Johnson, March 24, 1936.

Appropriations, interstate controversies.

A mere filing of papers or documents evincing an intention at some time to use waters of a natural stream for beneficial purposes does not constitute an appropriation of such waters and will not be so regarded in interstate controversies in the U. S. Supreme Court.

329 **SECURITIES**

To A. J. F. Schepp, March 24, 1936.

Sale of oil leases.

Sales of ten-acre oil leases of specific ten-acre tracts are not sales of securities within the contemplation of the Securities or Fraudulent Practices Acts.

Sales of ten-acre lease interests in larger tracts are securities particularly where there is a holding or operating agreement under which the purchaser would participate in revenue from properties other than his own.

330 **LEGISLATION IN SPECIAL SESSION**

To Jas. A. Brownlow, March 25, 1936.

Tax on use of natural gas.

Gas has been held not "tangible personal property" and an excise tax upon the use or consumption of natural gas, would not, if passed, be within the scope of the call, whether the funds realized by its operation were appropriated for public welfare purposes or for purposes of general revenue.

Citing *People's Gas Light, etc., Co. v. Ames*, 359 Ill. 152. See also Opinion to Hon. B. M. Keating, March 27, in regard to same matter. See also Opinion to Hon. J. W. Griffith, March 28, in re: same matter.

331 **VITAL STATISTICS**

To M. F. Haralson, M.D., March 27, 1936.

Local registrar can certify as to the copy of birth certificate which he retains, but only a certified copy of original in hands of State Board is "prima facie evidence."

332**LEGISLATION**

To Hon. J. A. Brownlow, March 28, 1936.

Under a proclamation calling an extraordinary session of the General Assembly, the business to be transacted must be limited to the objects stated in the proclamation, and no revenue measures except such as are specifically provided for in the proclamation can lawfully be adopted.

333**BUILDING AND LOAN**

To A. O. Johnson, March 31, 1936.

Segregating in federalizing state B. & L. Associations.

State associations are permitted to convey liquid assets to federal charter savings and loan association, retaining frozen assets in state association where 90% of shareholders consent to plan, and all dissenters are paid share credits in full.

334**MOTOR VEHICLE LAW**

To George Marland, Chief of Police, April 2, 1936.

Question as to authority of Motor Vehicle Department to revoke license of person upon conviction in Police Court of the offense of driving a motor vehicle while intoxicated or under the influence of a narcotic drug.

Upon the final conviction of any and all persons in any Police Court, including that in the City of Denver, of either the offense of driving a motor vehicle while intoxicated, or while under the influence of a narcotic drug, such Police Court shall require the surrender to it of "all operators' or chauffeurs' licenses and badges then held" by each person so convicted and shall forward the same with a record of such conviction to the Motor Vehicle Department. Upon the receipt of such record, it becomes mandatory upon the department to revoke such license.

335**INSURANCE**

To Jackson Cochrane, April 6, 1936.

Real estate mortgage insured under National Housing Act is eligible for investment of reserve funds of insurance companies, even though said mortgages be in excess of 50% of the value of the property mortgaged.

336**ABSTRACTERS**

To D. B. Graham, April 13, 1936.

County Clerk may prepare.

A county clerk may be required to prepare abstracts of title if there is no bonded abstracter in his county.

Citing Opinion No. 111, Atty. Gen., Report 1929-30;

Nos. 101 and 340, Atty. Gen. Report 1933-34;

Ch. 57, S. L. 1929, p. 184.

337

PUBLIC WELFARE

To Dan Hughes, April 14, 1936.

Member of County Board as Director of Public Welfare.

The State Board of Public Welfare has taken the position, by resolution duly passed, that members of the County Board of Public Welfare are not eligible to be appointed as Director, and since the County Director in each county must be approved by the State Board of Public Welfare, the question is set at rest by the resolution of the state board.

338

LIQUOR EXCISE TAX

To Geo. Saunders, April 20, 1936.

Sales on Army Reservation.

The State cannot tax any instrumentality of the Federal Government, and when your department is satisfied that the merchandise is being purchased *by the Army*, to be used at the general mess, the excise tax should not be collected, but an affidavit from the purchasing officer should be obtained.

However, the law requires that these stamps be placed upon malt beverages *before they are offered for sale*.

339

ELECTIONS

To Clyde L. Starrett, April 22, 1936.

Members of CCC Camps.

Members of CCC Camps neither gain nor lose their residence for voting purposes by virtue of their membership in these camps. Therefore, in the exercise of their franchise the members of such camps must vote in the precinct in which they voted at the time they became members of the CCC Camps. If not old enough to vote at the time they joined they will have to register in their home precincts.

340

MOTOR VEHICLES

To C. M. Armstrong, April 22, 1936.

Licenses for truck drivers.

The legislative intent probably was that all persons employed for purposes which required constant use of the public highways in the course of their employment should come within the definition of "chauffeur," and that drivers of laundry trucks should be licensed as chauffeurs.

Operators of trucks operated by or for highway contractors—both the owner and the hired driver—are chauffeurs within the meaning of the act.

341**COUNTY FUNDS**

To I. D. Rogers, April 28, 1936.

Transfers of.

In counties where, in making up the county budget, a contingent fund is made available to supplement other county funds, when contingencies arise, transfers from such contingent fund may be made, not only to the ordinary county revenue fund, but to any other fund that needs to be supplemented.

342**NATIONAL GUARD**

To Gov. Johnson, May 1, 1936.

Expenses on active duty.

Sec. 33, Ch. 183, S. L. 1921 does not contain a continuing appropriation for the expenses of the National Guard when on active duty.

Sections 244 and 245, S. L. 1921, do establish a continuing appropriation for such expenses. If the revenues made available by either of said sections are not sufficient to pay the expenses incurred by the National Guard in its recent service on the southern border, then certificates of indebtedness must be issued to take care of any shortage.

See *People ex rel. v. Kenehan*, 66 Colorado, 589.

343**STATE FUNDS IN BANK**

To Chas M. Armstrong, May 5, 1936.

Premiums on depository bonds—Investment in Treasury Bills.

1. Where the State Treasurer, by the use of interest on State funds deposited in banks, has paid premiums on depository bonds given by such banks to secure repayment of such deposits, such depository bonds may be continued in effect after June 7, 1936, on which date the banks receiving such deposits will cease to pay interest thereon.

2. While there is no statute expressly authorizing the State Treasurer to invest State funds in securities, it would be proper for him to use general revenue funds, not needed for present expenditure, in the purchase at par or less, of U. S. Treasury Bills which mature before the close of his term of office. Such a fund would be more in the nature of a deposit than investment of such funds.

344**COUNTY JUDGE**

To Helen A. Hurlburt, May 5, 1936.

Compensation as Clerk.

Under Ch. 96, S. L. 1929, a county judge who acts as his own clerk, may receive as compensation therefor fees of the office up

to the amount of the salary of the clerk fixed by law; but the county judge so acting as his own clerk cannot receive a salary as such clerk out of the county general fund.

345 STATE EMPLOYES' RETIREMENT

To C. C. Hezmalhalch, May 6, 1936.

Predatory animal hunters employed by the State Board of Stock Inspection Commissioners, regularly employed for 10 to 12 months each year, and paid a salary by the State are eligible to membership in the State Employees' Retirement Association, established by Ch. 151, S. L. 1931.

346 STATE EMPLOYES' RETIREMENT

To C. C. Hezmalhalch, May 6, 1936.

Teachers in educational institutions.

Sec. 8193, C. L. 1921, expressly declares that the school for the deaf and blind at Colorado Springs is a State Educational Institution. Therefore instructors in said school are not eligible to membership in the State Employees' Retirement Association, under Ch. 157, S. L. 1931.

347 MOTOR VEHICLE CODE

To Charles H. Gunn, May 8, 1936.

Speed limitations.

Speed limit is flexible. Discussion of phrase "prima facie evidence."

348 PUBLIC LANDS

To State Land Board, May 9, 1936.

An island formed in the bed of a navigable river (Arkansas River) subsequent to the admission of Colorado into statehood belongs to the State.

Hurst v. Dana, 12 Pac. 1041;

Steckel v. Vancil, 141 Pac. 550;

Winters v. Myers, 140 Pac. 1033.

349 STATE ENTOMOLOGIST

To Dr. C. A. Lory, May 12, 1936.

Abolishment of office.

While it would seem that the State Board of Agriculture, having the power to create the position of State Entomologist, would also have the power to abolish the office, yet recognition of the position by the State Legislature and the imposition upon it of certain duties, establishes the position as one having been recognized by that body; therefore abolishing the position would have the effect of defeating the intent and purpose of legislative enactment.

350

TAXATION

To Sherman E. Walrod, May 14, 1936.

Bank stock owned by R. F. C.

The Act of Congress of March 20, 1936, purports not only to prohibit future levies against preferred stocks issued by national and state banks and owned by the RFC, but also to extinguish past levies made upon such stock. This may be valid as to future levies, but we think it is invalid as to past levies, and such assessments should not be expunged by county assessors.

351

TAXATION

To James A. Marsh, May 15, 1936.

Bank stock owned by R. F. C.

Discussion of Act of Congress of March 20, 1936.

The Act of Congress of March 20, 1936, purports not only to prohibit future levies against preferred stock issued by national and state banks and owned by RFC, but also to extinguish past levies made upon such stocks. This may be valid as to future levies, but we think it is invalid as to past levies, and such levies should not be expunged by county assessors.

352

TAXATION

To Clay R. Apple, County Atty., May 15, 1936.

Bank stock owned by R. F. C.

Discussion of various situations which might arise under the Act of Congress of March 20, 1936, in view of decisions handed down recently by the U. S. Supreme Court.

353

UNIVERSITY OF COLORADO

To Dr. George Norlin, May 18, 1936.

Right of regents to institute condemnation proceedings.

We can find no authority in the Constitution or Statutes of the State, granting to the Board of Regents the right to maintain condemnation proceedings for the purpose of acquiring real estate for the use of the university, and the courts universally hold that agencies of the State are without power to condemn private property for public use unless that power is expressly granted or clearly implied.

354

MOTOR VEHICLES

To Charles H. Gunn, M. V. Supervisor, May 20, 1936.

Fee for circus and shows.

It is the opinion of this department that our courts would sustain the charging by your department of a reasonable permit fee for, and the regulation of, circuses and road-shows while they are traveling through and showing in this State.

355

LIQUOR CODE

To George E. Saunders, May 26, 1936.

Sales by wholesaler to consumer.

Under the 1935 Liquor Code a wholesaler cannot lawfully sell malt, vinous or spirituous liquors direct to consumer unless such wholesaler be a brewer holding a brewer's license in this State and having also a wholesaler's license.

356

COUNTY WARRANTS

To French L. Taylor, May 28, 1936.

Registration of.

It is the duty of the county treasurer to register all county warrants, apparently valid upon their face, upon presentation for such registration. The duty devolves upon the board of county commissioners to see to it that excessive warrants are not issued.

357

STATE FUNDS

To T. P. Detamore, June 2, 1936. ,

Investment of Hail Insurance Fund.

The State Highway Revenue Anticipation Warrants are special obligations of the State in the nature of bonds and are therefore competent investments for the State Hail Insurance Fund.

358

ATTACHMENT

To H. D. Mickle, June 3, 1936.

Exemption of U. S. pensions.

Sec. 5918, C. L. Colo., 1921, provides that all money received by any person resident of the State, as a pension from the U. S. Government * * * shall be exempt from execution or attachment or seizure * * * whether such pensioner shall be the head of a family or not. Whether or not this exemption would apply to such funds after investment or conversion into other property is not certain.

359

CIVIL SERVICE

To Governor Johnson, June 4, 1936.

No control over salaries.

The State Civil Service Commission has no control over salaries of provisional appointees to positions within the classified civil service.

Civil Service Comm. v. Cummings, 83 Colo. 379-383.

360

SCHOOL FUNDS

To State Board of Land Commissioners, June 5, 1936.

Investment of.

The State Highway Revenue Anticipation Warrants constitute a valid investment for the public school permanent fund.

361**COUNTY ROADS**

To F. A. Safranek, June 6, 1936.

Construction of cattle guards on.

1. Cattle guards constructed on county roads according to specifications prescribed by the State Highway Department will not constitute an obstruction to county roads;

2. The Soil Conservation Service would probably not be required to get permission from the county commissioners to construct such cattle guards, if they have previously obtained permission from the abutting landowners.

3. The county commissioners would not be liable in damages if they passively permit the construction of such cattle guards even if held to be obstructions to the highway. (El Paso County v. Bish, 18 Colo. 474.)

4. To remove cattle guards, whether put in with or without the consent of the county commissioners, it would merely be necessary to bring an action to abate them as nuisances.

362**LIQUOR LICENSES**

To G. E. Saunders, June 6, 1936.

Beer shipped in barrels.

Beer that has been shipped into the State in tax-paid barrels may not legally be rebottled and designated as tax-paid beer.

363**LIQUOR LICENSES**

To Geo. E. Saunders, June 8, 1936.

Placing of excise stamps on wine at winery.

A wholesale liquor dealer who purchases stamps for his bona fide order may send them to the winery to be placed on the bottles there.

364**STATE TREASURER**

To C. M. Armstrong, June 6, 1936.

Payment for department supplies permitted.

Alcohol department.

365**MOTOR VEHICLES**

To Chas. H. Gunn, June 8, 1936.

Authority to designate police officers.

Under Sec. 158, Art. XV, Ch. 164, S. L. 1935, the Motor Vehicle Supervisor may designate such police officers as he sees fit to assist in the enforcement of the provisions of said section. Such authorization must be made in writing and the officer designated by name.

366

LIVE STOCK

To Louis Henke, June 8, 1936.

Brand inspection fees.

The only fee in which the State is interested is the fee of 5 cents for brand inspection by the official brand inspector under the supervision of the stock inspection commissioners.

367

TAXATION

To J. R. Seaman, June 9, 1936.

Exemption from taxation pending proposed federal project.

1. County assessor would have no power to exempt property owned by farmers, notwithstanding the fact that the Federal Government may have a chattel mortgage thereon.

2. With regard to lands upon which the Federal Government has options for the purposes of the resettlement project, the county assessor should leave the land upon the tax rolls until it is actually transferred to the Federal Government.

368

SALES TAX

To T. L. Pollock, June 10, 1936.

Automobiles transferred in payment of debt.

Where automobiles are turned over by a dealer in payment of a debt evidenced by a promissory note, the transaction constitutes a sale and a tax up to the reasonable value of the automobiles, should be collected thereon.

369

MOTOR VEHICLE LAW

To C. H. Gunn, June 11, 1936.

Operation of rented cars.

A person from a foreign State making application to rent a car to be driven for a period of time in this State should be required to comply with the provisions of Sec. 7, sub-sec. (a) of the Operators and Chauffeurs License Law.

370

LIQUOR LICENSES

To Geo. E. Saunders, June 12, 1936.

Hotels operated in National Parks.

The State of Colorado may not require hotel liquor licenses for hotels operated under Federal Government concessions, for the reason that exclusive jurisdiction over the territory within the national parks mentioned has been ceded to the United States by acts of the Legislature of Colorado.

371

CHIROPRACTIC BOARD

To Dr. D. H. Burwell, June 12, 1936.

Legal expenses.

The funds of the Board of Chiropractic Examiners may not be expended to defray legal expenses incurred in defense of criminal indictments against unfit members of the board.

Shaw v. Macon, 19 Ga. 468;

Gilbert v. Berlin, 76 N. H. 470, 84 Atl. 235;

People v. Lawrence, 6 Hill N. Y. 244;

Chapman v. New York, 168 N. Y. 80; 56 L. R. A. 846.

372

MOTOR VEHICLE LAW

To J. J. Marsh, June 19, 1936.

Trailer licenses.

Truck tractor owned by non-resident, engaged in hauling trailer continuously for Colorado corporation. Owner of trailer should license tractor also although not legal owner of title. (Ch. 167, S. L. 1935.)

373

LIQUOR

To Geo. E. Saunders, June 22, 1936.

Surety bonds not renewed.

Each application for a liquor license should be accompanied by a duly executed surety bond, and the practice of "renewing" these bonds should not be allowed.

374

EMPLOYES' RETIREMENT

To R. J. Heath, June 24, 1936.

When a member of the State Employees' Retirement Association leaves the service of the State, but remains in the association, his pension payment, when payable must be paid at a reduced rate, said rate being reduced according to the ratio which his actual period of service bears to the period which he would have had to serve had he remained in the service of the State until he became eligible for pension payment.

375

STATE EMPLOYES' RETIREMENT

To R. J. Heath, June 24, 1936.

70-year-clause.

Since the 70-year-clause would be unconstitutional if applied to the majority of persons sought to be affected by the clause, the courts would probably say that the entire clause must fall and that it cannot be made effective as to the comparatively small remaining portion of the group exempt from the operation of

the Civil Service Amendment, which provides that persons employed by the State shall serve during efficient service and shall only be discharged for certain specified reasons.

376**JUDGMENT BONDS**

To Land Commissioners, June 25, 1936.

Validity of.

Judgment bonds issued by Florence are not affected by the Supreme Court decision in the case of *City of Aurora v. A. W. Krauss*.

377**TAXES**

To Wm. A. Way, June 25, 1936.

Sale by county after tax deed is acquired.

Re: Interpretation of Sec. 3, Ch. 217, S. L. '35.

In view of the uncertainty as to the meaning and effect of the act and of pending litigation involving its validity, the proper course for the county to pursue would be to make no conveyances until this litigation is disposed of and until the next General Assembly shall have clarified the statute.

378**TRUST DEEDS**

To C. H. Durant, June 25, 1936.

Partial redemptions.

1. Inasmuch as there is no provision in the statutes for partial redemptions from foreclosure, the owner of an undivided interest in the premises should be required to redeem the entire property if he wishes to protect his rights therein.

2. When a redemption is made, the recording of the redemption certificate operates as an assignment of the interest acquired by the purchaser at the foreclosure sale to the person redeeming. A certificate of redemption should be issued to every person redeeming when the redemption is made.

3. It is specifically provided that a lessee shall be considered a lienor and entitled to redeem as such. (Ch. 151 S. L. 1929 and Ch. 140, S. L. 1931.)

379**BUILDING AND LOAN**

To A. O. Johnson, June 30, 1936.

Tax certificates.

The Building and Loan Code of 1933 does not authorize the investment of excess funds of an association in tax certificates. Building and loan associations are corporations of limited power.

380**INSURANCE**

To Jackson Cochrane, June 30, 1936.

Permission to retain real estate.

Sec. 2498, C. L. 1921, applies only to domestic insurance companies and a foreign insurance company is not required thereby to prove permission from the State Insurance Commissioner to retain real estate located in Colorado for a period longer than 5 years. In such matters the company is governed by the law of the domiciled State.

381**BUILDING AND LOAN**

To A. O. Johnson, July 7, 1936.

First mortgage loans.

1. Building and loan associations may make first mortgage loans secured by improved rural real estate.

2. Such loans may be based upon the annual reduction plan under authority of *Art. 3, Sec. 2* (4) of B. & L. Code of 1933.

382**ATTACHMENT**

To M. L. Lyckholm, July 7, 1936.

Federal bonus.

Bonds and proceeds received from bonds received under the Act of Congress of January 27, 1936, are not subject to attachment, levy or seizure under any legal or equitable process.

Demands for alimony for wives and support money for children and court orders enforcing such claims do not come within such exemption because wives and children are not creditors within the meaning of the statutes, and such claims are directed against the veteran or pensioner and not against the pension money or proceeds thereof.

Hollis v. Bryan (1932 Miss.) 143 So. 687.

383**LIQUOR LICENSES**

To Geo. E. Saunders, July 9, 1936.

Ruling in Walters Brewing Co. v. Saunders.

Interpretation of the decision of the District Court in the case of The Walters Brewing Co. v. George E. Saunders, No. 24595. Wholesale beer and liquor licenses.

384**COUNTIES**

To W. V. Olin, July 9, 1936.

Consolidation of.

If an act of the Legislature can set up a new county out of the territory of an existing county, as in the case of Teller County

taken from El Paso County, it would follow that the General Assembly could reverse the process and consolidate two counties in one.

We have no court decisions on this subject.

385

INSURANCE

To Jackson Cochrane, July 16, 1936.

Organization expenses.

Sec. 2567, C. L. 1921, permits an insurance company organized under the Mutual Insurance Act of 1921 to use the proceeds from the sale of certificates of indebtedness to defray overhead and general expenses incurred prior to the date of the issuance of its license.

386

LIQUOR LICENSES

To Geo. E. Saunders, July 16, 1936.

Prorating of county fees—Rejection of 3.2 beer licenses.

1. The Legislature, in Par. 3, Sec. 5, Ch. 82, S. L. '35, and Secs. 18, 18-a, 19, 20 and 21, Ch. 142, S. L. '35, fixed the amount of the license fee to be paid to the local licensing authority and provided that such fees must be paid.

2. Under Ch. 82, S. L. '35, no licensing authority may arbitrarily refuse to issue a license to an applicant who has qualified under the provisions of the act.

387

EMPLOYEES' RETIREMENT

To R. J. Heath, July 20, 1936.

Excepting for technicians and persons holding special positions under Civil Service and members of the Retirement Association who are not under Civil Service, the citizenship of the members can be taken for granted.

388

DIRECTOR OF MARKETS

To Ben H. King, July 24, 1936.

Exemption of mixed car load lots.

Construction of Ch. 85, S. L. 1933.

389

STORE LICENSE TAX

To James W. Creamer, July 24, 1936.

All licenses expire December 31.

390

GAME AND FISH LAW

To R. G. Parvin, July 28, 1936.

Trespass.

Whether land is enclosed or not, consent of the owner should be obtained to hunt or fish thereon; and if not obtained the owner would have a civil cause of action for any damage sustained by him by reason of such trespass.

391

TAXATION

To E. M. Gooding, July 29, 1936.

Where a building is rented in part for a lodge and part for commercial purposes, unless the building or the income therefrom is used solely and exclusively for charitable purposes, the entire building would be subject to taxation. The question is now before the Supreme Court on appeal from Pueblo County,—no decision yet.

392

ELECTIONS

To Sen. David Elliott, July 30, 1936.

Designation by petition.

1. A person registered as a Republican could sign a petition to designate a Democrat for nomination for office at a primary election, if he signs it in time to change his party affiliation under Sec. 7542 as amended by Ch. 91, S. L. '31.

2. A candidate for the General Assembly is to be considered as a candidate for a state office from a district greater than a county, even though the district comprises only one county.

3. There should be one petition for county candidates and another for legislative candidates.

393

STATE CONTRACTS

To Peter Seerie, July 30, 1936.

Use of Colorado materials in public structures.

Secs. 453-455, C. L. '21, do not come into operation until the type of public structure has been fully determined upon by the State and local governmental agency in the exercise of its discretion. If, after such determination has been made, it should turn out that the material chosen can be produced of Colorado materials, then the differential allowed by the statute should be applied; but the fact that the type of material decided upon does not happen to be produced in Colorado, would not require the Highway Department or other agency to resort to the use of another type of Colorado material.

394

ELECTION

To L. C. Kinnikin, August 5, 1936.

Nomination by petition.

The only situation we can find in which an entire county ticket can be nominated by a single petition *after* the primary election has been held is in the case of independent candidates running upon an independent ticket.

Citing Sec. 7557, C. L. 1921.

395

INSURANCE

To Jackson Cochrane, August 5, 1936.

Conditions precedent to issuance of license.

The conditions precedent to licensing of a mutual insurance company contained in Sec. 2563 C. L. 1921, are minimum requirements that must be satisfied at all times by operating companies and are not applicable solely to a company newly organized, seeking its first license. The Commissioner of Insurance should suspend the license of any company not meeting said requirements.

396

SCHOOLS

To K. L. Sanborn, August 5, 1936.

Care of injured children.

School boards should not place a child injured on playgrounds in care of physician of their choice, but should place child in parents' care and allow parents to choose physician to attend injured child.

397

LIQUOR

To Silt Drug Co., August 5, 1936.

Sale of medicinal liquor.

The Liquor Code of 1935 restricts the hours during which drug stores may sell alcoholic liquors.

In a Liquor Licensed Drug Store a registered apprentice under the Rules and Regulations of the State Board of Pharmacy, may sell or compound drugs . . . in the presence of a registered pharmacist or assistant pharmacist. However, we do not believe that this provision applies to sale of alcoholic liquors in sealed packages.

Sec. 7, S. L. 1927, page 568 provides for the conduct of business in a drug store during the temporary absence of the registered pharmacist. (Citing also Sec. 6, p. 567, S. L. 1927.)

BUILDING AND LOAN

August 10, 1936.

Mr. A. O. Johnson,
Building and Loan Commissioner,
Denver, Colorado.

Dear Sir:

At your request, we submit our opinion relevant to the construction to be given by your Department to the provisions contained in the Building and Loan Code of 1933, relating to reserves.

If upon an examination or other inquiry it is determined that the estimated contingency losses which the association may suffer in connection with any phase of operation, are in excess of the total remaining balance in the Reserve for Contingent Losses, it is the duty of the association, and failing, the Commissioner may direct that a special reserve or reserves be created out of gross earnings in compliance with Section 12(b) of Article IX, or from other reserves and undivided profits, if available, to protect against said prospective losses. If such special reserve or reserves are created, all direct and contingent losses so specially provided for, shall be charged to said special reserves so long as a balance shall remain therein and when exhausted, shall be charged to the Reserve for Contingent Losses as provided for in Section 26, Article IX. On the other hand, the association is not authorized to create unnecessary reserves to the injury of present shareholders. In case of abuse, the Commissioner may order a reduction or abolishment of any special reserve not justified by fair business practices specifically provided for by statute.

Unless a special reserve is provided for, all direct and contingent losses shall be charged to the Reserve for Contingent Losses as provided by Section 26, Article IX, so long as a balance shall remain therein and when exhausted, shall be charged to gross earnings in compliance with Section 12(c), Article IX.

Associations are required to make the minimum annual credits to the Reserve for Contingent Losses if available in accordance with the provisions of Section 26, Article IX, and may make further credits, where justifiable, until said Reserve has reached the maximum limit as provided for in said Section 26. In permitting deductions from net earnings under Section 12 (c) (1), Art IX, for limited dividend bearing shares before requiring the usual additions to contingent reserve and the payment of dividends on fully participating shares and permanent stock, it was clearly the intention of the Legislature that the holders of limited dividend bearing shares were to be paid the maximum called for under their certificates, if available, even though nothing further be available for additions to the Reserve for Contingent Losses, fully participating shareholders and permanent stockholders. This point is the subject of a separate opinion but mention is herein made for the reason

that it has come to our attention that certain associations, in practice, have deducted and set aside the maximum requirement but have failed to pay the same out to this preferred class of shareholders. This construction does not nullify the purpose of the Reserve for Contingent Losses or endanger the solvency of the association for whenever said Reserve becomes exhausted, the excess of said losses is deductible from gross earnings under Section 12-c, before the association need provide for the holders of limited dividend bearing shares.

In our opinion, the Reserve for Contingent Losses is an extraordinary reserve built up during prosperous periods to take care of extraordinary losses in times of stress. True, Section 12-c, Article IX, states that "all losses shall be charged to the contingent reserve" however the Code recognizes that other reserves may be created, and sound business practice requires that an obvious loss be provided for specially. In construing the clause above quoted, we are of the opinion, that you may read into the same "all losses *not specially provided for* * * *."

Your authority for the foregoing lies in Sections 7, 12 and 26 of Article IX, and impliedly in Section 3, Article VIII.

Very truly yours,

BYRON G. ROGERS,
Attorney General.

J. GLENN DONALDSON,
Assistant Attorney General.

399

ELECTIONS

To James M. Noland, Aug. 11, 1936.

Persons in CCC Camps.

1. If an enrollee who previously enlisted from another State than Colorado has been in camp in this State for more than one year and in the county for more than 90 days, he cannot legally claim residence and vote here.

2. If an enrollee, formerly a resident of another county in Colorado, has been in a CCC Camp for more than 90 days he does not have the option of claiming residence in the county where the camp is situated, but must vote either in person or by absent ballot in the county of his residence.

3. This opinion also applies to Commissioned Army Officers serving in these camps.

400

INSURANCE

To Jackson Cochrane, Aug. 14, 1936.

Transfer of funds to Firemen's Pension Fund.

Mere supposition that a date appearing in an original statute was carried over into the amended statute by error, affords no basis for an administrative department to ignore the date specified.

Sec. 9368 as amended, relating to transfer and disbursement of Insurance Department tax collections to Firemen's Pension Fund construed to require the Insurance Department to make statement of collections as of June 30; the Treasurer to transfer collections from Insurance Fund to Firemen's Fund by Nov. 30 following, to be disbursed by Auditor June 30 next.

401

TAXES

To C. M. Somerville, Aug. 18, 1936.

Priority of liens.

If a state has perfected its tax lien against property, a subsequent tax lien filed by the Federal Government cannot displace the State lien.

Citing cases similar.

402

LEGAL NEWSPAPER

To Jas. B. Woody, Aug. 18, 1936.

What constitutes.

To qualify as a legal newspaper, a publication must be admitted as second class matter to the United States mails; it must contain news—that is, it must record events of general interest to the public as a whole, although its circulation need not consist exclusively of paid subscribers; it must have a subscription list.

Pitkin v. Price, 10 Colo. App. 519.

In re: H. B. No. 10, 50 Colo. 71.

403

ELECTIONS

To A. G. Kochenberger, Aug. 19, 1936.

Committeeman.

The position of Precinct Committeeman is a party office, controlled largely by party rules. A county clerk has no discretion in the matter of selecting the name of more than one candidate for committeeman upon the ballot. When certificates of designation valid upon their face and proper as to form are filed with him he must cause the names so certified to be printed upon the party primary ballot.

Citing Ch. 77, S. L. 1933, Ch. 98, S. L. 1927.

404

LEGAL NEWSPAPER

To J. J. Hendrick, Aug. 21, 1936.

Published partly in foreign language.

Under the Colorado law a newspaper must be "a newspaper of general circulation," and general rule is it must be published in English, but the courts recognize an exception in communities where circumstances are unusual i. e. mixed communities where a foreign language is used.

Citing McLean v. Bergner, 80 Mo. 414.

405

ELECTIONS

To Vera Rosebrough, Aug. 24, 1936.

Directors under Caddoa District Act.

Under Sec. 3, Ch. 84, S. L. 1935, "only qualified electors who have paid a tax on real estate in the district in the year preceding the election, shall be entitled to vote."

In the same section provision is made for challenging votes and that "any person who makes a false oath shall be guilty of perjury and be punished therefor."

However, the judges of election would not be justified in demanding that every prospective elector present a tax receipt before being allowed to vote.

406

ELECTIONS

To Hon. Worth Allen, Aug. 25, 1936.

Members of CCC Camps.

Members of CCC Camps whose former residence is other than the precinct in which the camp is located, will have to vote in the precinct and county where they had their residence before they entered the camps. In order to do this they will have to be registered in their home precincts.

407

ELECTIONS

To E. A. Shaffer, Aug. 26, 1936.

Residence of voter.

Inquiry: whether a person who has sold his property in one county and has moved to another where he has lived for a number of years, can be considered a resident of the first county for voting purposes, or whether he should be considered a resident of the second county, must be determined by his "intention of returning" to the first county or of establishing his residence (home, domicile) in the second county.

408

INSURANCE

To Hon. Jackson Cochrane, Aug. 27, 1936.

Investments.

Lien on real estate—levied by any special improvement district conservation district, irrigation district, etc., shall not prevent mortgages, trust deeds or other incumbrances upon such real estate from being lawful investments for funds of domestic insurance companies.

Ch. 108, S. L. 1931, was not repealed by Ch. 108, S. L. 1933.

409

ELECTIONS

To Clyde L. Starrett, Aug. 29, 1936.

Primary day, not a holiday.

Sec. 3802 as amended by Ch. 103, S. L. 1933, provides in part that the day of the general election in November, or such other day as a general election may be held, shall be a holiday. No mention being made of primary election day, this office has held that that day is not a holiday.

Sale of liquor—The Liquor Law specifically says that no intoxicating liquor shall be sold on Primary Election Day, excepting 3.2% beer.

410

INSURANCE

To Hon. Jackson Cochrane, Aug. 31, 1936.

Doing business by mail in states where company is not licensed.

Domestic Insurance Companies may transact business through the mails in states wherein the company is not licensed to do business.

411

ELECTIONS

To Mrs. Leo Kennedy, Sept. 3, 1936.

Persons coming of age between primary and general election.

Persons who will be twenty-one before the primary election can be registered to vote at that election; persons who will be twenty-one before the general election can be registered to vote at that election; but persons who will become twenty-one between the dates of the primary and general elections should not be registered until after the primary election because they are not eligible to vote at such election.

412

ELECTIONS

To Adair J. Hotchkiss, Sept. 3, 1936.

Written name on primary ballot.

There is no objection to Republican voters writing in the name of a Democratic candidate on their primary ballots, but his name will appear on the ballot for the general election only once.

413

SCHOOLS

To Mrs. Lucile Dee Horton, Sept. 3, 1936.

Where it is to the financial benefit of the school district to transport children to a school located outside the boundaries of the district, the school board may in determining routes to be taken by the school bus deliver and receive children outside the boundaries of the school district.

414

MOTOR VEHICLES

To F. A. Berger, Sept. 3, 1936.

Violations in national parks.

The United States Commissioner in the Rocky Mountain National Parks is authorized to send in to the Motor Vehicle Department records of convictions for violating the Highway Laws. The State Motor Vehicle Department has the authority to suspend licenses upon the basis of such reports.

415

CIVIL SERVICE

To H. C. Getty, Sept. 4, 1936.

Legislative qualifications of special officers.

The legislature has the power to prescribe qualifications for special officers, notwithstanding the Civil Service Amendment, so long as the qualifications so imposed are not arbitrary and are reasonably effective to increase the efficiency of the officer and the department.

The provisions of the act prescribing residence qualifications for employes of the Public Utilities Commission should be followed by the Civil Service Commission.

416

LIQUOR LICENSES

To Geo. E. Saunders, Sept. 4, 1936.

Refund on license for fermented malt beverages.

After the Secretary of State has issued the license and the fee therefor has been paid into the State treasury, no refund of the fee can be made.

417

ELECTIONS

To Warren Hale, Sept. 5, 1936.

Residence of W. P. A. workers.

Merely living at a W. P. A. Camp will not change the residence of the workers employed there, but such residence for voting purposes can be established or shown to exist by acts or circumstances entirely distinct from such physical presence at the camp.

418

ELECTIONS

To John Abell, Sept. 5, 1936.

Residence.

A person formerly a resident of Lincoln County, who left the State seeking employment, was absent for over a year and returned to his home county in November, 1935, would not have lost his residence in Colorado and would be entitled to vote at the coming election unless he intends to leave the State and take up his permanent residence in another state.

This is a matter for the judges of election to determine.

419 STATE HOME FOR DEPENDENT CHILDREN

To J. L. McMenamin, Sept. 8, 1936.

Discretion of Board of Control in returning children.

The discretion of the Board of Control of the State Home for Dependent Children, with regard to returning a child to its parents, placing it in a foster home or retaining it in the State Home cannot be interfered with by the State or County Boards of Public Welfare, by the parents of the child or by the court that committed the child, by a reopening of the case. The matter rests entirely with the Board.

Citing Compiled Laws of Colorado, 1921, Secs. 628, 629, 630, 631, 632, 633;

State Home v. Mulertz, 60 Colo. 468;

Flynn v. Casper, 26 Colo. App. 344;

People ex rel. v. Bolton, 27 Colo. App. 39.

420 CREDIT UNIONS

To Grant McFerson, Sept. 16, 1936.

Loans.

Loans are limited to members, but Sec. 4 (e) provides that a credit union "has power to invest in any investment legal for savings banks or for trust funds in the State."

421 LIQUOR LICENSES

To Geo. E. Saunders, Sept. 18, 1936.

Sale by manufacturer.

It is obvious that the manufacturer's license provided for in part (1) of Sec. 5 of the Act relates to manufacturing of fermented malt beverages within this State; and a manufacturer of such beverages who also holds a wholesaler's license, is limited to the sale of malt beverages of his own manufacture under such licenses.

422 SCHOOLS

To F. A. Brookshier, Sept. 18, 1936.

Employment of children.

Children under the age of 14 years may not legally be employed during any month when the public schools are in session except children who are employed in fruit orchards, gardens, fields, or farms and in these cases the employer must obtain a permit from the County Superintendent of Schools.

423 LIQUOR

To Alfred A. Arraj, Sept. 21, 1936.

Refunds.

Under Par. 3, Sec. 9, Ch. 142, S. L. 1933, a Town Council *may* rebate a portion of the license fee for a beer license payable to the town, but the statute does not require that such rebates be made.

424

SECURITIES COMMISSION

To A. J. F. Schepp, Sept. 22, 1936

Interests in breeding stock.

Sale of an undivided interest in fur-bearing breeding stock with ultimate delivery to one member of the purchasing group, constitutes a certificate of interest in a profit sharing agreement or a beneficial interest in or title to, property or profits and therefore a "security" within the contemplation of our Securities Act.

425

PUBLIC WORKS—COUNTIES

To Ben A. Birdsey, Sept. 22, 1936.

A county does not have the power to call a vote of the taxpayers to approve the issuance of bonds for the construction of a custom mill under Section 8842, C. L. 1921, or under Chapter 17, Extraordinary Session Laws of 1933, as amended by Chapter 180, Session Laws, 1935. This power might depend upon the method of financing.

426

ELECTIONS

To Fred E. Baer, Sept. 22, 1936.

Candidates cannot "treat" voters.

The word "treating" as found in Sec. 7826, C. L. 1921, should be interpreted literally and the fact that the word "threat" is found in the heading of the section does not change the situation.

427 WORKMEN'S COMPENSATION UNDER W. P. A.

To Governor Edwin C. Johnson, Sept. 23, 1936.

Public funds of the state and political subdivisions may be used for the payment of premiums on workmen's compensation insurance covering persons engaged under W. P. A. voluntary work agreements.

428

TAXATION

To Colorado State Tax Commission, Sept. 25, 1936.

Change in assessment.

The protestant having filed his written objections with the County Board of Equalization of Pueblo County and also with the State Tax Commission, is entitled to a hearing thereon at such time as the Tax Commission may fix, of which hearing notice should be given to the protestant, the County Commissioners and the County Assessor of Pueblo County.

After such hearing the State Tax Commission may take such action in reference to raising or lowering the valuation of the property involved as they deem proper.

sonable, an appeal may be made to the county superintendent of schools within 30 days after the ruling by the school board has been given.

435

TAXES

To R. E. Johnson, Sept. 30, 1936.

Amendment limiting mill levies.

Proposed amendment limiting mill levies, if passed, would probably not affect taxes levied in 1936 and payable in 1937.

As to whether, in the event of the passage of said amendment, the legislature could distribute state funds to various political subdivisions, there are several cases now pending in the Supreme Court upon this question and no definite answer can be given.

436

ELECTIONS

To C. P. Rigby, Oct. 1, 1936.

Residence, registration lists.

A person who declares himself a resident of a county for school purposes must be considered a resident of the same county for voting purposes.

Judges of election must meet three weeks before the general election to make up the list, and on the Tuesday, one week before the general election, and on the Monday next before the general election to register voters.

437

TAXES

To Mac V. Danford, Oct. 2, 1936.

Remove exempt property from rolls.

County assessor must remove property from tax rolls when ordered to by a court of competent jurisdiction and should also remove property belonging to the Colorado Seminary but should not remove property owned by fraternal organizations in general.

438

ELECTIONS

To Mr. W. M. Siegrist, Oct. 2, 1936.

Marking ballots.

In the case of Baldwin vs. Wade, 50 Colo. 109, 114, our Supreme Court upheld the use of an indelible pencil. "Our suggestion is that if the intent of the voter is perfectly clear and beyond question, the vote should be counted, and let those who challenge it contest the same in the manner provided by law."

439

SCHOOLS

To Mr. Ward Skiff, Oct. 2, 1936.

Duties of secretary.

A secretary of a school board may be found guilty of a misdemeanor where he fails to perform any duty required by law

when so required by a majority of the school board. (Sec. 8355, C. L. 1921).

440 STATE COMPENSATION INSURANCE

To Dr. A. G. Prather, Oct. 2, 1936.

Volunteer firemen.

Members of volunteer fire departments are not entitled to participate in benefits of the State Compensation Insurance Fund.

441 ELECTIONS

To Mr. Edward Loup, Oct. 3, 1936.

Writing in name at general election.

"Writ-in" ballots, if properly cast with a cross mark after the name which is written in, should be counted the same as any other ballot under section 7711, C. L. 1921 and section 7742, C. L. 1921. See also *Littlejohn vs. People*, 52 Colo. 217 and 223; *Baldwin vs. Wade*, 50 Colo. 109, Article II, Colorado Constitution.

442 SCHOOLS

To Hon. James M. Noland, Oct. 3, 1936.

Services of directors.

Directors of school districts do not incur criminal liability in cases where they have accepted moneys from the district for such services as repairing school building, welding the gate, and other similar services. A civil suit, however, may be brought for the recovery of the money paid out to the directors for such services.

443 MOTOR VEHICLES

To Messrs. Russell & McKelvey, Oct. 5, 1936.

Chauffeurs' licenses.

Drivers of Western Colorado Power Company trucks making occasional deliveries of merchandise to customers outside of city limits who have a P. U. C. license are required to have a chauffeur's license rather than an operator's license.

444 ELECTIONS

To Omar T. Mallory, Oct. 5, 1936.

Election by writing in name—Incompatible offices.

For a person to be nominated for an office by writing his name in upon the ballot, he must receive at least 10% of the gubernatorial votes cast by his political party at the last election in his precinct.

Under Article III of the constitution, the office of state senator is incompatible with that of justice of the peace and cannot be held by the same individual.

445 LIQUOR

To Howard Fisher, Oct. 6, 1936.

Additional city license.

Chapter 142, Session Laws of 1935, being the liquor code of 1935, is state-wide in its operation and the license fees therein fixed cannot be changed by local licensing authorities. See Section 1 and Section 27 of the article.

446 ELECTIONS

To Charles A. Petrie, Oct. 7, 1936.

Residence.

Persons who have declared their residence to be in a particular county for school purposes must be considered residents of that county for voting purposes as well.

447 ELECTIONS

To Hume S. White, Oct. 7, 1936.

Compensation of judges—Mileage.

Chapter 151, S. L. 1933, limiting mileage fees to 8c per mile does not limit the compensation allowed election judges for delivering returns and ballot boxes, which is fixed by Section 190, C. S. A. 1935, at 10c per mile for the reason that this compensation is a payment for services rendered in lieu of salary.

448 ELECTIONS

To Mrs. Loren Record, Oct. 9, 1936.

Polling place near saloon.

It is unlawful to locate a polling place within fifty feet of any saloon or other place where intoxicating liquor is *usually* sold to be consumed on the premises. The fact that the saloon or other such place will be closed upon election day does not change the situation.

449 MOTOR VEHICLES

To Frank A. Berger, Oct. 16, 1936.

Width of vehicles on highway.

Permanent body shall not exceed eight feet. The only exception is a load of loose hay and the loose hay shall not exceed 12 feet. The permanent body under it must not exceed 8 feet.

450 ELECTIONS

To Mr. Harry Gooch, Oct. 26, 1936.

Convict on parole.

A convict out on parole is entitled to vote.

451

SCHOOLS

To Mr. Alfred A. Arraj, Oct. 15, 1936.

Union high school funds.

Funds raised by a union high school district in a county of the fourth class may be used for the maintenance of the district, including such items as: janitor's salary, light and fuel bills.

452

SCHOOLS

To Mrs. Myrtle Jordan, Oct. 15, 1936.

Funds, registered warrants.

A school district cannot legally levy a tax to retire registered warrants when the special fund has already been increased by a per cent over the preceding year. A school district may not legally levy an additional two mills for sinking fund levy and use that amount for the payment of registered warrants.

453

SCHOOLS

To O. E. Collins, Oct. 15, 1936.

Liability for damages.

School directors are not personally liable in Colorado for damages resulting from injury to children being transported to school. However, reasonable care and caution in the selection of school bus equipment and the selection of drivers must be exercised.

454

SCHOOLS

To Mr. Burton Rice, Oct. 15, 1936.

Several schools in one district.

In school districts where several school houses are being maintained the school board cannot be required to open a school which has been discontinued. However, at least one school must be maintained in each district.

455

ELECTIONS

To Hon. Clarence Bullock, Oct. 21, 1936.

Residence.

A residence is neither gained nor lost by reason of a person's presence or absence while in the civil or military service of the state, or United States, or while a student at any institution, nor while kept at public expense in any poor house of other asylum, nor while confined in public prison. Article VII, Section 4, Colorado Constitution.

456

SCHOOLS

To F. K. Shelton, Oct. 24, 1936.

Director making contracts with district.

The penalty which may be imposed upon a school director for profiting from contracts with the school district may be imprisonment not exceeding six months and a fine not exceeding \$2,000, and such directors shall be removed from office.

457

CHIROPRACTIC

To Chiropractic Board, Oct. 28, 1936.

Concerning the right of Board of Chiropractic Examiners to approve standards of education and to change the same.

458

ELECTIONS

To Mr. Edwin A. Bemis, Nov. 2, 1936.

Nomination lists.

List of nominations published in same form as official ballot. (Sec. 78, 197 Elections, C. A. S. 1935.)

459

ACCOUNTANCY BOARD

To Arthur L. Baldwin, Nov. 5, 1936.

Regulations.

The Accountancy Board cannot by the adoption of a rule substitute educational training for the statutory requirement of three years experience in the practice of accounting. Practice means a holding out to the public to perform services for which compensation is expected.

460

BANKING

To Hon. Grant McFerson, Nov. 5, 1936.

Savings department for employees.

For a general corporation to set up a Savings Department so that its employees may deposit funds at interest, said funds to be used by said corporation in its business, constitutes the doing of a banking business, necessitating compliance with the Banking Laws.

Citing: Chap. 18, Sec. 1, C. S. A. 1935;

Aulton v. Savings Institution, 17 Wall. 117;

Curtis, et al v. Leavitt, 15 N. Y. 2;

MacLaren v. Stole, 124 N. W. 667.

461

ELECTIONS

To Dr. Clem Christensen, Nov. 9, 1936.

Registration.

The failure to register upon the part of a person who is otherwise a qualified voter does not disqualify such person from running for and being elected to a county office. (Constitution Article VII, Section 6, 20 C. J. 81).

462 SCHOOLS

To Elia N. Conwell, Nov. 13, 1936.

Only electors residing within the territory to be formed into a new district are eligible to vote upon the question of organizing the new district.

463 TAXES

To Mr. Charles Petrie, Nov. 17, 1936.

Redemptions.

A taxpayer to whom property has been assessed may not divide the property and pay a pro rata portion of the taxes and thereby redeem a pro rata portion of the entirety.

464 CONTINUING APPROPRIATIONS

To H. F. Bedford, Nov. 17, 1936.

"Depository Bond Premium Fund" is not a continuing appropriation. Chapter 178, Session Laws of 1935.

465 ELECTIONS

To Mr. Robert F. Wisnewski, Nov. 17, 1936.

A soldier stationed at Fort Logan but having his residence off the reservation is not entitled to vote unless he had established this same residence before enlistment. Article VII, Section 4, Constitution of Colorado.

466 COUNTY COMMISSIONERS

To Ben L. Garman, Nov. 18, 1936.

Surplus in O. C. R. fund.

It is unlawful for Board of County Commissioners to use surplus in O. C. R. Fund to retire bonds due in future years.

467 TAXES

To Ben L. Garman, Nov. 18, 1936.

Mothers' compensation.

Mill levy for Mothers' Compensation superseded by law adopted Second Extraordinary Session, 1936, providing for aid for dependent children.

468 STATE INDUSTRIAL SCHOOL FOR BOYS

To Gov. Edwin C. Johnson, Nov. 18, 1936.

Officers.

The Board of Control of the State Industrial School for Boys has the right to make a provisional appointment for vacancy of superintendent.

469

COUNTY ASSESSOR

To Mac V. Danford, Nov. 18, 1936.

Assessment against irrigation district lands.

What lands are in the district and size of levy is to be determined by the Board of Directors. County assessor has no discretion in the matter and must extend the levy on the assessment roll.

470

LIQUOR

To Model Distributing Co., Nov. 19, 1936.

Wineries.

A business which buys wine in barrels and then bottles it for resale is not required or qualified by law to have a manufacturer's license for a winery.

471

OFFICERS

To Arthur L. Baldwin, Nov. 20, 1936.

Filing of oaths.

A member of the State Board of Accountancy, appointed by the Governor, is a "civil officer" within the contemplation of Art. XII, Sec. 8 of the State Constitution and should file the required oath of office prior to entering upon his duties.

472

ELECTIONS

To D. H. Wattson, Nov. 24, 1936.

Indians.

Until Congress enfranchises the Indian, he will not have the right to vote. He could not qualify either under the Fourteenth Amendment to the Constitution of the United States, or Article VII, Section 1, Constitution of the State of Colorado, or under statutory qualification as a voter.

473

INSURANCE

To Hon. Jackson Cochrane, Nov. 25, 1936.

Policies written by non-admitted company.

(1) An assured may consummate a contract of insurance with a non-admitted insurance company upon his own behalf. Any statutory prohibition of this right is unconstitutional under the authority of *French v. People*, 6 Colo. App. 311, *Allegeyer v. Louisiana*.

(2) The contract of insurance cannot be written through an intermediary in the form of a broker. Our statute, Sec. 2491, C. L. 1921, prohibiting a broker from negotiating insurance with a non-admitted company is constitutional under the authority of:

Hooper vs. California, 155 U. S. 648;

Nutting vs. Massachusetts, 183 U. S. 553.

474

SECURITIES

To A. J. F. Schepp, Nov. 27, 1936.

Dealers' licenses.

Dealers in securities employing salesmen to make joint offerings may upon their behalf apply for salesman's license jointly upon a single application. If said salesman handles offerings for either dealer separately, a license must be obtained under each dealer.

475

INSURANCE

To Jackson Cochrane, Nov. 30, 1936.

Fraternal benefit associations.

Sec. 2611, C. L. 1921, permits societies incorporated under the corporation not for profit act prior to the enactment of the Fraternal Act in 1911, to qualify and obtain license as a Fraternal Society without the necessity of reincorporating thereunder.

476

TAXES

To Alfred T. May, Nov. 30, 1936.

Delinquent tax list publication.

There is no statute regulating the depth of box heading or relating to whether or not the box heading should be placed over each double column, in delinquent tax list publication. It is the opinion of this office, however, that the placing of the box heading over each double column is proper, reasonable and possibly necessary in order that the notice may be deemed clear and unconfusing.

477

BOARD OF EMBALMING EXAMINERS

To E. C. Johnson, Governor, Dec. 4, 1936.

Officers, appointment of.

Appointment of a person to State Board of Embalming Examiners, whose name does not appear upon the list submitted by the State Board of Embalming Directors, would be void and of no effect. (Vol. III, Ch. 60, p. 170, C. S. A. 1935.)

478

TAXES**Assignment of tax certificates.**

December 7, 1936.

Mr. M. W. Kessey,
Treasurer, Teller County,
Cripple Creek, Colorado.

Dear Sir:

Replying to your inquiry of December 4, 1936, relating to the authority of a County Treasurer to assign a Certificate of Purchase on real estate bid in by the County where one offers to pay

the amount for which the same was bid in by the County with interest penalties accrued from the date of sale, together with the sum of \$1.00 for making the assignment, also taxes assessed thereon since the date of the sale, we are of the opinion that you have such authority as is set forth in the latter part of paragraph 247, page 825, Vol. 4, 1935 C. S. A. Your attention is also called to paragraph 249, page 828, Vol. 4 C. S. A. The latter paragraph in no way repeals paragraph 247. It is not inconsistent therewith.

Both paragraphs referred to are part of the revenue law and are in full force and effect and not inconsistent. The primary purpose is to collect revenue and the duty of the Treasurer under paragraph 247 is clear.

It is our opinion that the Treasurer not only has the authority to make the assignment under paragraph 247, upon conditions therein required, but that it is his duty so to do. And the first purchaser who appears and offers to pay the proper amount is entitled to the assignment.

The Resolution of the Board of County Commissioners, as contemplated under the above paragraphs, 247 and 249, are only required when there is some advantage sought by the purchaser or where the Board of County Commissioners in order to collect revenue find that such advantage to be offered is necessary in order to collect revenue. If any purchaser appears or tenders all which is due the county, then there is no necessity of the resolution of the Board of County Commissioners.

An examination of the cases cited under paragraph 247, pages 826 and 827, we think sustains the foregoing views.

Yours very truly,

BYRON G. ROGERS,
Attorney General.

C. E. SYDNER,
Assistant Attorney General.

479

OFFICERS

To Gov. Edwin C. Johnson, Dec. 12, 1936.

Director of Tuberculosis.

Is appointed by State Department of Public Welfare.

480

UNEMPLOYMENT COMPENSATION

To Unemployment Compensation Div., Dec. 12, 1936.

Employer's Summary Contribution Report approved.

481

LIQUOR

License refused if needs of neighborhood are satisfied.

Mr. Roy Dodson,
Councilman,
Silt, Colorado.

December 14, 1936.

Dear Sir:

This is to acknowledgde receipt of your letter dated December 10, 1936.

Omitting the facts outlined in your letter, we understand that you desire the opinion of this office on the following propositions stated in your letter:

1. “* * * the rights of the (Town) Board in approving and disapproving Liquor Licenses.”

2. “The question arises from many firms can a town of 261 population support legitimately and does the Board have the right to consider the number of licenses which it shall approve.”

3. “Is there such a thing legally as a saturation point and if so who is the judge”?

I am enclosing herewith a pamphlet copy of the Liquor Code of 1935 (Ch. 142, S. L. 1935) for your information and for reference in connection with this opinon.

The town council has the right to approve or disapprove applications to it for liquor licenses, and such discretion as is vested in the town council is found in Section 9 of the Act (pages 9-10 of the pamphlet).

This section provides in the first paragraph as to the issuance of licenses as follows:

“* * * Where the license fee is to be paid into the treasury of any city, town or city and county, the licenses in this Act provided for shall be issued by the council in a city and county and by the council, *boards of trustees* or licensing authority in any other city or town, where the license fee is to be paid into the treasury of a county, the licenses provided for in this Act shall be issued by the Board of County Commissioners of such county.”

The next line of this paragraph relates to the authority of the local licensing authority to refuse to issue a license and reads as follows:

“The council of a city and county and the boards of trustees, councils or licensing authorities in any other city or town and the Board of County Commissioners in any county shall have authority to refuse to issue any licenses

provided for in this Act *for good cause*, subject to review by the courts hereinbefore provided.” (Underscoring supplied).

The court has the right as set forth in paragraph (b) of Section 8 of the Act, (page 9 of the pamphlet) to review the action of your board in refusing to issue a license to determine if such action was capricious or arbitrary.

We think that the second paragraph of Section 9 of the Act, (bottom page 9 of the pamphlet) is applicable to your questions 2 and 3. The pertinent part of this paragraph reads as follows:

“Before granting any license all licensing authorities shall *consider the reasonable requirements of the neighborhood*, the desires of the inhabitants as evidenced by petitions, remonstrances or otherwise and *all other reasonable restrictions which are or may be placed upon the new district or districts by the council* of the city, town, city and county or county or by the Board of County Commissioners of any county.”

The action of the local authorities in refusing to issue a license as provided in this section 9 has been before our Supreme Court twice.

The first case, *Van DeVegt v. Commissioners*, 98 Colo. 161, decided February 3, 1936, arose in Larimer County over the refusal of the Board to issue a drug store liquor license for a place located on the edge of the city limits. The city of Fort Collins and territory contiguous within a five-mile radius has a population of more than 15,000 people and there is no retail liquor store or liquor-licensed drug store within twelve miles. (From the facts recited by the court, page 167).

Protests were filed with the Board against the granting of the license, page 168.

The action of the Board in refusing to issue the license was upheld on the ground that the board could consider the “desires of the inhabitants” and that the action of the Board was not capricious or arbitrary in this case.

There appear in this case certain statements of the Supreme Court which are applicable to your queries:

“The right to refuse *for good cause*, of necessity vests in it (the local authority) *in the first instance* the right to determine what is good cause for refusal.” Page 166.

“In our opinion it was the intention of the legislature by passing section 9 of the act to vest a wide discretion in county commissioners with respect to issuing licenses for liquor stores.” Page 171.

What was here said as to county commissioners, of course,

would apply to the board of trustees in a town when passing on a town liquor license.

The court said that the action of the board is not arbitrary or capricious "where such action is based on evidence from which reasonable men might honestly draw different conclusions." A reasonable doubt, said the court, "must be resolved in favor of the action of a board vested with discretion." Page 173.

In the second case, *Huston v. Gilman*, 98 Colo. 301, decided February 3, 1936, the City of Boulder had refused to grant a liquor license. Boulder is a city of about 15,000 inhabitants and no liquor license had been issued therein on account of a city ordinance prohibiting the sale of liquor within the city. The court did not pass directly upon the validity of this ordinance, but did hold as follows:

"In section 9, chapter 142, page 611, S. L. 1935, concerning intoxicating liquors, it is specifically provided that the city council of a city shall have authority to refuse to issue any license provided for in the act for good cause, subject to review by the courts * * *. There is no showing in this record that it has abused its discretion or exceeded its authority in such refusal."

The purpose of the Act as set out in Section 1, (page 1 of the pamphlet) is that it is for the "protection of the economic and social welfare, the health and peace and morals of the people of this state."

Section 7 of the Act, (page 8 of the pamphlet), permits the State Licensing Authority to "consider the reasonable requirements of the neighborhood. * * *."

In Section 8 the State Licensing Authority may refuse a license "if in its opinion licenses already granted for the particular locality are adequate for the reasonable needs of the community."

Therefore we believe that it is within the purposes of the Act and the letter and spirit of Section 9 for the licensing authority to take into consideration the needs of the community; and, if, after considering the evidence and other factors in the case, the licensing authority is convinced that additional licenses are not necessary to meet the reasonable requirements of the neighborhood and that such additional licenses should be refused for this reason, the licensing authority would be sustained in its action as a proper exercise of the discretion vested in it by section 9.

Trusting that we have answered your queries so that you may proceed in this matter, I am,

Very truly yours,

BYRON G. ROGERS,
Attorney General.

REID WILLIAMS,
Assistant Attorney General.

482

STATE INSTITUTIONS

To. M. L. Coolbaugh, Dec. 14, 1936.

Providing housing facilities.

School of Mines can borrow money to build housing facilities to be paid for out of proceeds from houses. Use by faculty members does not change situation.

(Const. Art. 10, Sec. 5, 29 Colo. 143, 96 Colo. 442, Vol. IV, p. 930, C. S. A.)

483

NEWSPAPERS

To Harry P. Vories, Dec. 15, 1936.

Foreign language.

Italian newspaper changing to English language will not qualify as legal newspaper until it has been published in English 52 consecutive weeks.

484

SCHOOLS

To Mr. Joe D. Garcia, Dec. 15, 1936.

Warrants.

School district warrants may not legally be countersigned by the County Superintendent of Schools, since the statutes provide that the three school board directors shall sign all warrants.

485

COUNTIES

To Malcolm Glenn Wyer, Dec. 16, 1936.

Expenditure for library.

If expenditure to meet funds allocated by National Youth Administration comes within Sec. 2, Ch. 180, S. L. 1935, or Federal Act, it is permissible. This fact should be ascertained by Federal Government. It does not come within County Library Act, p. 430, S. L. 1929.

486

STATE OFFICERS

To James T. Burke, Dec. 17, 1936.

Liability on bond.

So far as state is concerned the liability of a subordinate officer to the head of the department is immaterial. State looks to bond of head of department for reimbursement.

487

LIQUOR

To George E. Saunders, Dec. 17, 1936.

Refund of license fees.

License fees paid voluntarily cannot be refunded. (Ch. 142, S. L. 1935, 53 Pac. 458, 3 Colo. 349, 63 Pac. 155, and other cases.)

488

EXECUTIVE COUNCIL

To W. D. Jamieson, Dec. 22, 1936.

Transaction of business.

A quorum of the Executive Council consists of a majority of all the members. The majority of the quorum is authorized to act upon any matter properly coming before it.

INDEX

NOTE: Opinion Number Follows Each Lead

INDEX

A

ABSTRACTERS	Page
County Clerk prepare abstracts when (230) (336)	101, 126
Need not live in county where licensed (230)	101
Search of records by non-licensee (276)	110
ACCOUNTANTS	
Experience requirement (459)	153
Member of board file oath (471)	155
Power of board to make rules (88)	64
Practice under firm name (88)	64
ADMINISTRATIVE CODE OF 1933	
Duties of Excise Tax Commissioner under (13) (215)	47, 98
Paying salary from two funds on alternate months (43)	55
Trustees hire faculty at School of Mines under Code (47)	56
AGRICULTURAL COLLEGE	
Non-resident student presumed to remain non-resident (161)	86
Specific appropriations when income drops below 5% (301)	115
State Entomologist, abolishment of (349)	129
ALCOHOL	
(See Intoxicating Liquors)	
APPROPRIATIONS	
(See also Fees and Salaries)	
Civil Service salary act not continuing appropriation (181)	90
Continuing appropriation for National Guard (342)	128
Continuing appropriation in Inheritance Tax Department (72)	61
Depository bond premium fund not continuing (464)	154
For Agricultural College permanent fund to maintain 5% (301)	115
Salary fixed in appropriation bill not increased (128) (148) (179)	80, 84, 90
State Examiner's salary not continuing appropriation (19)	48
ARBITRATION	
Parole arbitration agreement (83)	63
ARCHITECTS	
Granting license mandatory when (7)	46
ATTACHMENT AND GARNISHMENT	
Exemption of U. S. pension money (358)	131
Soldiers bonus exempt when (382)	136
AUDITING BOARD	
(See State Auditing Board)	

B

BANKS AND BANKING	
(See Credit Unions)	
Auto finance companies licensed under Small Loan Act (100)	74
Commissioner administer Money Lenders Act (3)	45
Effect of decision holding 1919 Act void (3)	45
Escrow agreement securing deposit of county funds (284)	111
Foreign corporation qualify as money lender (81)	63
Money Lenders secure license for each place of business (79)	63
Premiums on depository bonds for state funds (343)	128
Refinancing is forbearance within Small Loan Act (100)	74
Saving department for employes in ordinary corporation (460)	153
Stock owned by R. F. C., taxation of (207) (251) (323) (350) (351)	95, 104, 120, 130, 130

	Page
BARBERS	
Power of Board of Health to regulate (89).....	65
BEAUTY PARLORS, ETC.	
(See Cosmetologists)	
BEER AND WINES	
(See Intoxicating Liquors)	
BLIND PERSONS	
(See Relief)	
BONDS	
Improvement, order of payment (235).....	102
BOARDS OF EXAMINATION	
(See Barbers, Chiropractors, etc.)	
BOARDS OF COUNTY COMMISSIONERS	
(See County Commissioners)	
BOILER INSPECTION	
Delinquent inspection fees (237).....	102
Schools must pay fee for (229).....	100
BOXING COMMISSION	
Bond covers what (310).....	117
Collect tax on advance sale (310).....	117
Patriotic organization pay 5% tax, file bond (309).....	117
BUILDING AND LOAN ASSOCIATIONS	
By-law limiting rights withdrawing member invalid when (283).....	111
Constitutionality of Code (41).....	55
Continuing proxies void in federalizing association (142).....	83
Delinquent taxes on property of impaired association (286).....	112
Dividends payable only out of earning (41).....	55
Endorsement of deposited securities (320).....	119
Federal H. O. L. Bk. Bd. no control over state association (282).....	111
Federalizing state associations, segregating assets (333).....	126
Investment in tax certificates (379).....	135
Make first mortgage loans, how (381).....	136
Mutualization of association, how (298).....	115
Preferences allowed withdrawing members (281).....	111
Receipts subject to withdrawal disbursement, H. O. L. C. bonds (281) ..	111
Reserves, requirements as to (398).....	140
State and federal associations operated jointly, pro-ration (282).....	111
Transfer of assets approved by department and stockholders (294)....	113

C

CATTLE	
(See Live Stock)	
CHAIN STORE TAX	
Application, how made (35).....	54
Application of act to departments and agencies (182).....	90
Common stock ownership (149).....	84
Great Western Sugar Company, selling seed, etc., is store (105).....	75
Identical and overlapping control or management (21) (35) (149) (175)	49, 54, 84, 89
License expires December 31st (389).....	137
Public Service Company merchandise stores not exempt (190).....	92
Salvation Army Stores (322).....	120
"Ultimate Control" (175).....	89
Used car display lot not store (208).....	95
Vending machine not a store (70).....	61
What constitutes "chain" (21).....	49

CHILD WELFARE

Page

(See Mothers' Compensation, State Home for Dependent Children)

CHIROPRACTORS

Board cannot review action taken by previous board (125).....	79
Board can perform ministerial act omitted by previous board (125).....	79
Changing educational standards (457).....	153
Define dishonorable conduct (269).....	108
Ground for suspension, malpractice (245).....	103
Legal expense of board defending criminal indictments (371).....	134
Licensing and relicensing (234).....	101
Rule requiring post graduate course (64).....	60

CITIES AND TOWNS

City of second class may levy sales tax (200).....	94
Contracts let to lowest bidder (37).....	54
Council and clerk incompatible offices (159).....	86
Improvement bonds, order of payment (235).....	102
Investment of funds (111) (147).....	76, 84
Investment of funds in insured B. & L. shares (147).....	84
Liquor fines, disposition (173).....	89
Management of Firemen's Pension Fund (111).....	76
Mayor not vote in case of tie on appropriation (37).....	54
Not liable for sales tax when (32).....	53
Procedure to grant electric franchise (159).....	86
State law on hard rubber tires applies to home rule city (279).....	110

CIVIL ACTIONS

(See Statutes)

CIVIL SERVICE

Appointment after expiration of two-year list (29).....	52
Commission cannot expend money without appropriation (40).....	55
Courtesy Patrol technicians (238).....	102
Legislature prescribe qualifications of officer, when (415).....	145
No control over provisional employes salaries (359).....	131
Person at top of list entitled to be Collector of Revenue (168).....	88
Person on preferred list accepting permanent certification (113).....	77
Provisional appointee removed only with approval of Commission (10).....	47
Seventy-year clause in retirement law void (375).....	134

COAL MINES

Coal mining code, refunds, license transfer, sale of mine (97).....	71
License fee for part of year (46).....	56
Maps by licensed engineer (71).....	61
State treasurer issue licenses, inspection department keeps records (56).....	58

COLORADO PSYCHOPATHIC HOSPITAL

Petition for admission to (104).....	75
--------------------------------------	----

COLORADO STATE HOSPITAL

Building contract, landscaping (217).....	98
Executive Council authorize expenditure for buildings (124).....	79

COMMISSION MERCHANTS

(See Fruits and Vegetables)

COMPENSATION INSURANCE

(See State Compensation Insurance Fund)

CONSERVANCY

(See Water)

CONSTITUTIONAL LAW		Page
Act allowing preemption of water rights invalid (318)	119	
Act amended, invalid unless other house concurs (304)	116	
Building and Loan code (41)	55	
Conservancy district act (171)	88	
Consolidation of counties (384)	136	
First State Welfare plan (303)	116	
Foreign securities tax for state fair invalid (302)	115	
Gas tax on interstate carriers (324)	120	
HB 200 permitting payment of taxes without interest (94)	66	
Income tax law (44)	55	
Scope of call for special session (330) (332)	125, 126	
Seventy-year clause in retirement law (375)	134	
State Industrial Recovery Act (166)	87	
CORPORATIONS		
Corporate life of mutual insurance company (1)	45	
Federal agencies exempt from state laws (195)	93	
Financial information in annual reports (34)	53	
Foreign and domestic with same name (172)	89	
Mutual Benefit Association and Burial Associations (228)	100	
Not for profit, when (228)	100	
COSMETOLOGIST		
Power of Board of Health to regulate (89)	65	
COUNTIES		
Cattle guards on county road (361)	132	
Consolidation of (384)	136	
Custom mill cannot be built by (425)	147	
Expenditure for library (485)	161	
Issue excess warrants for emergency purposes (203)	94	
COUNTY ASSESSOR		
No discretion in re levy for irrigation district (469)	155	
COUNTY CLERK AND RECORDER		
Changing deputy's salary (15)	48	
Require affidavit when mortgage on auto foreclosed (58)	59	
COUNTY COMMISSIONERS		
Authorize cattle guards on roads (367)	133	
Issue excess warrants for emergency purposes (203)	94	
Moving out of county, effect (326)	124	
Not appointed Welfare Director (337)	127	
Not use surplus in general fund to retire future due bonds (466)	154	
Should not appoint member of board as health officer (39)	54	
COUNTY FUNDS		
Excess warrants for emergency purposes (203)	94	
Handling and expenditure of gas tax money (20) (36)	49, 54	
Investment in H. O. L. C. bonds (243)	103	
Levy for bond interest may be used how (431)	148	
Registration of excess warrants (356)	131	
Surplus in general fund to retire future due bonds (466)	154	
Transfers from contingent fund, when (341)	128	
Used for compensation insurance on W. P. A. workers (427)	147	
COUNTY JUDGE AND COURT		
Judge acting as his own clerk (344)	128	
COUNTY OFFICERS		
(See under title of officer, Fees and Salaries)		

COUNTY TREASURER	Page
No commission on pension funds (233).....	101
No commission on relief funds (156).....	86
No commission on W. P. A. funds (266).....	108
Register excess county warrants (356).....	131

COURTESY PATROL
(See Highways)

CREDIT UNIONS	
Invest in U. S. Savings Bonds (305).....	116
Loans and investments (420).....	146
Return funds to expelled member (305).....	116

D

DAIRIES	
Counter ice cream freezers licensed (84).....	64
Emulsified or homogenized milk labeled (209).....	95
Salaries of inspectors (129) (202).....	80, 94
Salary of commissioner (181) (202).....	90, 94

DEEDS OF TRUST
(See Mortgages)

DENTISTS	
Effect of failure to pay license fee (69).....	61

DIRECTOR OF MARKETS
(See Fruits and Vegetables)

DOCTORS
(See Medicine)

DRAINAGE DISTRICTS
(See Water and Irrigation)

E

EGG INSPECTION	
License may be increased during year (67).....	60

ELECTIONS	
Ballots, how marked by voter (438).....	149
Candidates cannot "treat" voters (426).....	147
Candidate failing to register (461).....	153
Candidate for Legislature is from "district larger than county" (392) ..	138
Committeemen, designation (403).....	142
Compensation of judges, mileage (447).....	151
Convict on parole may vote (450).....	151
Entire county ticket nominated in single petition, when (394).....	139
Indians vote, when (472).....	155
Liquor not sold on primary day (409).....	144
Nomination list published, form (458).....	153
Polling place near saloon (448).....	151
Primary day not holiday (409).....	144
Qualification to vote for director of Caddoa District (405).....	143
Registration list made up, how (436).....	149
Registration, persons coming of age between primary and general elec- tion (411).....	144
Residence for school and voting purposes same (436) (446).....	149, 151
Residence, how determined (407).....	143
Residence of persons in CCC camp (339) (399) (406).....	127, 141, 143
Residence of W. P. A. workers (417).....	145
Residence, person employed out of state (418).....	145
Residence, service of state or United States, etc. (455).....	152

ELECTIONS (Continued)	Page
Separate petitions for county and legislative candidates (392).....	138
Signing petition for person of other party (392).....	138
Soldier at Fort Logan with residence off reservation (465).....	154
Special local option election held on general election day (317).....	119
Writing name in at general election (441).....	150
Writing name in at primary of person of opposite party (412).....	144
Writing name in at primary, vote required (444).....	150
EMBALMERS	
Appointment to board of one not on list (477).....	156
EMINENT DOMAIN	
University, no power to exercise (353).....	130
EMPLOYEES	
(See State Employees Retirement Fund, Civil Service)	
ENGINEERS	
Practice by firm, license required when (8).....	46
ENTOMOLOGIST	
(See Agricultural College)	
EXECUTIVE COUNCIL	
Authorize emergency expenditure by State Hospital (124).....	79
Not authorize state magazine (127).....	80
Quorum, majority of all members, authority (488).....	162
F	
FAIR	
Tax on foreign securities for State Fair unconstitutional (302).....	115
FARM LOANS	
(See Federal Farm Loans)	
FEDERAL AID AND RELIEF	
(See Public Works, Social Security)	
FEES AND SALARIES	
Act raising salaries of civil service employes not continuing appropriation (181).....	90
Added duties performed without fee (184) (137).....	91, 82
Appointee to fill vacancy, what law governs (319).....	119
Civil Service no control over provisional employees (359).....	131
Deputy county treasurer's salary changes in (15).....	48
Deputy game warden (160).....	86
Election judges mileage (447).....	151
Extra fee for filing civil action (See Statutes)	
Inclusion in long bill not required, continuing appropriation (181).....	90
In Inheritance Tax Department (72).....	61
Justices of the peace (219).....	98
License fee may be increased during year (67).....	60
Of county judge acting as own clerk (344).....	128
Of dairy inspectors (129) (202).....	80, 94
Of State Entomologist (204).....	95
Part-time investigator paid out of two funds in alternate months (42) ..	55
Payment of persons in anticipation of date of statute (4).....	45
Pay of state employees while at National Guard camp (109).....	76
Reinstatement of salaries reduced by Ch. 181, S. L. '33 (63).....	60
Salaries not fixed by legislature fixed by Executive Council (73).....	62
Salary in long appropriation limited by it (128) (148) (179).....	80, 84, 90
Secretary of Pharmacy Board, compensation (11).....	47
Sheriff's mileage (272).....	109
Vocational Education Department (148).....	84

FIREMEN'S PENSION FUND	Page
Blanket insurance for (132).....	81
Management and control of (111).....	76

FOOD INSPECTION
(See Fruits and Vegetables)

TRAUDULENT PRACTICE ACT	
Interests in breeding stock (424).....	147
Investment contract deposit fund, purpose (314).....	118
Oil royalties (194).....	93
Sale of lots in placer mine with participation rights (162).....	87
Sales of ten-acre oil leases and lease interests distinguished (329).....	125

FRUITS AND VEGETABLES	
Commission merchant's bond covers short check (191).....	92
Commission merchant, definition (191).....	92
Exemption of mixed carload lots (388).....	137
Fee for sampling and also for shipping certificate (271).....	109
Salaries in Director of Markets Dept. fixed by Executive Council (73)...	62

G

GAMBLING DEVICES
"Bank night" at theatres, (See Insurance) (See Trading Stamps)

GAME AND FISH	
Hunting in game refuge (146).....	84
Parole arbitration agreement (83).....	63
Restricted open seasons (146).....	84
Trespass on unenclosed private land (390).....	138

GAS AND OIL	
Disposition of counties' share of gas tax (20) (36).....	49, 54
Gas tax paid by interstate carriers, when (324).....	120

GENERAL ASSEMBLY	
Eligibility editor of publications, Agricultural college (261).....	106
Eligibility of member to other office (99) (134).....	74, 81
Eligibility to Board of County Commissioners (210).....	96
Eligibility to Justice of Peace office (444).....	150
Interstate compact not ratified by resolution (86).....	64
Prescribe qualifications of state officers, when (415).....	145
Right and duty of Lieutenant Governor to vote in case of tie (14).....	47
Special Session, what legislation within the call (330) (332).....	125, 126

GOVERNOR	
Parol from reformatory (107).....	75
Right and duty of Lieutenant Governor to vote in case of tie (14).....	47

H

HAIL INSURANCE	
Fund invest in Highway Anticipation Warrants (357).....	131
Reduction of tax by county board (288).....	112

HEALTH	
Birth certificates, who qualified to certify (331).....	125
Cannot impose fee to administer narcotic act (137).....	82
County board appoint health officer not member of board (39).....	54
In Schools (239).....	102
Power to regulate barbers and cosmetologists (89).....	65
"Restaurant" definition of (102).....	74

HIGHWAYS	Page
Accident reports, who may examine, when (280).....	110
Anticipation warrants investment for hail insurance fund (357).....	131
Anticipation warrants, investment for school fund (360).....	131
Appointment of technicians (238).....	102
Awarding contract not changed by anticipation warrant law (57).....	58
Cattle guard on county roads (361).....	132
Courtesy patrol expenses, how paid (131).....	81
Create and maintain testing laboratory (262).....	107
Manufacture signs at penitentiary (funds for) (82).....	63
State law on hard rubber tires applies to home rule city (279).....	110
Transfer of highway fund to special fund (2).....	45
HOME OWNERS LOAN CORPORATION	
Investment in bonds of (See Building and Loan)	
INDUSTRIAL ALCOHOL	
(See Intoxicating Liquor)	
INDUSTRIAL COMMISSION	
Adjudicate disputes after adjustment fails (295).....	114
Wage rates on highway work and W. P. A. projects different (295)....	114
INDUSTRIAL RECOVERY ACT	
(See Constitutional Law)	
INDUSTRIAL SCHOOL	
(See Reformatory)	
INHERITANCE TAX	
Interest of resident in foreign partnership (60).....	59
Salaries in department are continuing appropriations (72).....	61
INSANE PERSONS	
Residence of persons in CCC camps (31).....	53
INSURANCE	
(See State Compensation Insurance Fund)	
Administrative officer's discretion in granting license (103).....	75
Amendment of articles (1).....	45
Auto club membership including insurance (139).....	82
Blanket insurance for firemen (132).....	81
Commissioner attend convention at companies' invitation (249).....	104
Commissioner's duty when receiver appointed for company (176).....	89
Conditions precedent to issuance of license (395).....	139
Corporate life of mutual company (1).....	45
Failure comply with subsequent acts, de facto Co. (291).....	113
Foreign company served by serving commissioner, federal agency pay usual fee (49).....	57
Foreign mutual company limiting liability of members, rejected (93) ..	65
Foreign mutual company must permit assessment (114).....	77
Fraternal benefit associations prior to 1911 act (475).....	156
Grace period in fraternal benefit society (119).....	78
Insurance against loss of "Bank Night" award is lottery (312).....	118
Insurance of children on army posts (112).....	76
Insurance of minors (33).....	53
Insured mortgage investment for insurance company (335).....	126
Invest in mortgages, special assessments (408).....	143
Mail business in foreign states (410).....	144
Mutual benefit associations (See Corporations)	
Mutual Company, payment of interest only from surplus (106).....	75
Mutual Insurance Act, effect of on previous acts (165).....	87
Mutual non-profit, not fraternal society, deposit requirements (316)....	118
Officers of company borrow from company when (106).....	75
Organization expenses (385).....	137

INSURANCE (Continued)	Page
Partial reinsurance of mutual company prohibited (25).....	50
Policemen's Protective Association not subject to act (169).....	88
Policy forms (236).....	102
Policy written by non-admitted company (473).....	155
Regulation of agents on government reservations (112).....	76
Release of statutory deposit (241).....	103
Residence requirements for agents' License (167).....	88
Retaining real estate over five years (380).....	136
Retaliatory provisions, operation of (150).....	84
Revocation and relicensing effect (163).....	87
Trainmen Brotherhood exempt from insurance laws (85).....	64
Transfer of funds to Firemen's Pension Fund, when (400).....	141
INTERSTATE COMPACTS	
Cannot be ratified by joint resolution (86).....	64
INTOXICATING LIQUORS	
Additional city license (421).....	146
Alcohol for manufacturing (253).....	105
Alcohol, sale of by licensee, when (92).....	65
Audit of licensee's records (253).....	105
Beer in tax-paid barrels, bottling (362).....	132
Beer license refused, when (386).....	137
Beer stamps on basis of liquid content of carton (143).....	83
Branch houses operated by brewery (270).....	108
Brewery with manufacturer's license, warehouses (240) (383).....	102, 136
Confiscated liquor, sale by U. S. or by railroad (275).....	109
Credits allowed on new license (91) (151) (199) (277).....	65, 85, 93, 110
Death of licensee, continue business how (264).....	107
Disposition of 3.2% beer license fees (30).....	53
Distiller's license, sales permitted under (9).....	46
Distribution of fees to local option districts (123).....	79
Exemption from tax of consul (268).....	108
Fines by town, disposition (173).....	89
Fort Logan Post Exchange not exempt from beer tax (187).....	91
Gift of liquor by amusement place illegal (205).....	95
License fees to Old Age Pension Fund (87) (289).....	64, 113
License for part of year (135) (220).....	82, 99
License in Garden City denied (327).....	125
License to minors forbidden (311).....	117
Licenses for hotels operated in national parks (370).....	133
Manufacturer sell own beer (421).....	146
"Meal," "food," what constitutes (170) (274).....	88, 109
Medicinal liquor by drug stores, when (397).....	139
Needs of community (265).....	107
Power of city to refuse to issue more licenses (481).....	158
Prorating county fees (386).....	137
Rebate of unused portion of license, when (91) (151) (199) (277) (416) (423)	65, 85, 93, 110, 145, 146
Rebottling wine, license (470).....	155
Rectifier cannot handle wine (115).....	77
Refund not allowed when payment voluntary (487).....	161
Refund not provided (277).....	110
Refund under medicinal liquor law (285).....	112
Restaurants and hotels owned by same person, one license (90).....	65
Retailer selling to other retailers (213).....	97
Requiring approval of local authorities for license (259).....	106
Sales on army reservation (338).....	127
Sales by clubs, by package or by drink (265).....	107
Sales by hotels and restaurants, by package (265).....	107
Sales by wholesaler to consumer (355).....	131

INTOXICATING LIQUOR (Continued)	Page
Sales to Italian Consul (268).....	108
Special local option election held on general election day (317).....	119
Stamps at winery (363).....	132
Supplies for alcohol department (364).....	132
Surety bonds not renewed (373).....	134
3.2% beer license, scope fees, bond (95).....	70
Wholesale beer and liquor license, warehouses (240) (383).....	102, 136
Wholesaler not handle soda fountain equipment (325).....	124
IRRIGATION	
(See Water and Irrigation)	
JUDGMENT BONDS	
Validity of (376).....	135
JUSTICE OF PEACE	
Incompatible with state senator's office (444).....	150
LABOR	
(See Industrial Commission)	
LAND BOARD	
(See State Land Board)	
LEGAL PUBLICATIONS	
(See Newspapers)	
LEGISLATURE	
(See General Assembly)	
LICENSES	
(See under various boards, and Intoxicating Liquor)	
LICENSE TAX	
(See under object taxed)	
LIQUOR AND BEER	
(See Intoxicating Liquors)	
LIVESTOCK	
Brand inspection fees (366).....	133
Cattle guards on county roads (361).....	132
Sale of interest in breeding stock (424).....	147
LOAN COMPANIES	
(See Banks)	
LOTTERY AND GIFT ENTERPRISE	
(See Trading Stamps)	
MEDICINE	
Government doctor exempt from state license, when (292).....	113
MENTAL DEFECTIVES	
(See Insane Persons)	
MILITARY DEPARTMENT	
Continuing appropriation for National Guard on active duty (342).....	128
Expenses paid by certificates of indebtedness, when (342).....	128
Pay of state employees at annual encampment (109).....	76
MONEY LENDERS ACT	
(See Banks)	
MORTGAGES	
Foreclosure of an automobile (58).....	59
Leinor redeem (378).....	135
Redemption certificate, issued, effect (378).....	135
Redemption of undivided interest (378).....	135

MOTHERS' COMPENSATION	Page
Levy superseded by Aid to Dependent Children levy (467).....	154

MOTOR VEHICLES

(See also Gas and Oil)

Act requiring purchase of license in county of residence (50).....	57
Act requiring tax paid before license issued invalid (304).....	116
Auto finance companies licensed under Small Loan Act (100).....	74
"Chauffeur" includes truck drivers, when (340).....	127
Chauffeur's license, truck making occasional delivery (443).....	150
Designation of police officers (365).....	132
Dump wagons, etc., used in road building licensed (313).....	118
Duties of Excise Tax Commissioner (13) (215).....	47, 98
Examiners of operators and chauffeurs, appointment of (297).....	114
Expiration of operators license, "year" (246).....	104
Fee for road shows and circuses (354).....	130
Fire-fighting equipment exempt (313).....	118
Handling counties' share of gas tax and auto fees (20).....	49
Interpretation of act requiring tax paid before licensed (117).....	78
Interstate corporation register cars, where (300).....	115
Licenses revoked and suspended, when (216).....	98
Non-resident's truck tractor operated in Colo. (372).....	134
Operator of government truck exempt, when (321).....	119
Operator of rented car obtain license (369).....	133
Payment of taxes before obtaining license (54) (304).....	58, 116
Reciprocal privileges with foreign countries (80).....	63
Registering title when mortgage foreclosed (58).....	59
Revoke license on police court conviction (334).....	126
Speed limits (347).....	129
State law on hard rubber tires applies to home rule city (279).....	110
Suspend license for violation in National Park (414).....	145
Transient vehicle not taxable (293) (306).....	113, 116
Width of vehicles on highway (449).....	151

NATIONAL GUARD

(See Military Department)

NEWSPAPERS

Changed from foreign to English language, qualifies when (483).....	161
Foreign language newspaper (222) (404).....	99, 142
General circulation in the county (5) (255).....	46, 105
Legal paper, what constitutes (402).....	142
Published partly in foreign language (404).....	142
Sheriff designate paper for legal publication (192).....	92
Suspension of publication (130).....	80

NOTARY PUBLIC

Is county officer and can act only in his county (273).....	109
---	-----

OFFICERS

Appointment of person not on Embalming Examiners list is void (477).....	156
County Board should not appoint member as health officer (39).....	54
County commissioner and Welfare Director incompatible (337).....	127
Deputy supervisors and patrolmen or officers (134).....	81
Director of tuberculosis appointed by Welfare Board (479).....	157
Incompatible offices (99) (210) (261).....	74, 96, 106
Legal expenses defending criminal indictments (371).....	134
Members of state boards file oaths (471).....	155
Notary public is county officer (273).....	109
State looks to bond of head of department (486).....	161
State senator and justice of peace incompatible (444).....	150
Teacher cannot hold office of school director (53).....	58
Town Council and Town Clerk incompatible (159).....	86

OIL INSPECTION DEPARTMENT (See Gas and Oil)	Page
OLD AGE PENSIONS	
Beer and liquor fees allocated to (87) (289).....	64, 113
County treasurer, no commission on funds (233).....	101
Distribution to local option districts (123).....	79
Property turned over to county fund tax exempt (198).....	93
Residence requirements (250).....	104
PARDONS AND PAROLES (See Reformatory)	
PENITENTIARY (See State Penitentiary)	
PHARMACY	
Compensation of secretary of board (11).....	47
Part-time investigator for board (43).....	55
POLITICAL PARTIES (See Elections)	
PSYCHOPATHIC HOSPITAL (See Colorado Psychopathic Hospital)	
PUBLIC BUILDINGS (See Public Works)	
PUBLIC FUNDS (See State Funds, County Funds, Local Government Budgets, Judgment Bonds and Schools)	
PUBLIC LANDS (See State Land Board)	
PUBLIC UTILITIES COMMISSION	
No authority to make contract for audit of records (152).....	85
Taxation of motor carriers, sites (307).....	116
PUBLIC WELFARE (See Old Age Pension, Relief, etc.)	
Member County Board not appointed Director (337).....	127
PUBLIC WORKS	
Contract for State Hospital, landscaping (217).....	98
County expenditure to meet N. Y. A. funds for library (485).....	161
Custom mill not built by county (425).....	147
Dormitory bonds paid by borrowing from maintenance fund (227).....	100
School of Mines borrow money for housing facilities (482).....	161
Special fund doctrine (227) (482).....	161
Toll road, Federal loan to county for (55).....	58
R	
REAL ESTATE BROKERS BOARD Dealers in oil royalties not under (194).....	93
REFORMATORY Board appoint superintendent provisionally (468).....	154
Governor's power to parole from (107).....	75
RELIEF	
Committee accept title to sanitarium (241).....	103
County treasurer's commission for handling funds (156) (266).....	86, 108
Merchandise for relief exempt from sales tax when (248).....	104
Purchase with relief money exempt from sales tax when (23) (77).....	49, 62
Rent quarters for F. E. R. A (145).....	84
State Industrial Recovery Act Unconstitutional (166).....	87
Validity of first State Welfare plan (303).....	116
Workmen's compensation for relief workers (120).....	78
W. P. A. workers covered by compensation insurance (427).....	147

RESTAURANT LAW

(See Health)

Page

RETIREMENT

(See State Employees Retirement Fund)

S

SALES TAX

Auctions subject to tax (33)	54
Auto equipment sold to be used in interstate commerce (154)	85
Blue prints exempt (201)	94
Chemicals used to destroy weeds (153)	85
Cities not subject to, when (32)	53
City of second class may levy sales tax (200)	94
Collection from bankrupt company (218)	98
Commodities paying Federal processing tax (22)	49
Construction company, restaurants, boarding houses (186)	91
Electric signs, rented (133)	92
Exemption of items used in processing (Gates Co.) (74)	62
Exemptions and exemption certificates (27)	50
Five per cent for administration can be anticipated (223)	99
Freight charges (27)	50
Goods distributed for Rural Rehabilitation (77)	62
Interstate sales (27)	50
Irrigation companies (185)	91
Leases taxable (61)	59
Lumber used in greenhouses (133)	81
Materials for state projects (24)	50
Merchandise for relief purposes (248)	104
Merchants must remit full 2% (225)	100
Orders taken for C. O. D. shipment, Christmas cards (214)	98
Payment in cash in full only (218)	98
Payment of expenses incident to creation of department (65)	60
Poisoned bait sold by U. S. Department of Agriculture (66)	60
Purchase by political subdivision, drainage district (429)	148
Purchase by political subdivision, irrigation district (430)	148
Purchases with relief money (23)	49
Religious and charitable institutions (78)	62
Retailer must account for stolen tax money (42)	55
Sales by administrator (76)	62
Sales by jobbers (45)	56
Sales in National Parks (116) (141)	77, 83
Sales of tangible property by national bank (230)	113
Sales to contractors (27)	50
Sales to railroad companies (126)	80
School cafeterias (75)	62
Services charges, rental, royalty, etc. (144) (193)	83, 92
Transfer in settlement of a debt (368)	133
Treasurer anticipate revenue for administrative purposes (65)	60

SCHOOL OF MINES

Board of Trustees hire faculty (47)	56
Borrow money for housing facilities (482)	161

SCHOOLS

Balance to credit of districts not credited to general fund (157)	86
Bus deliver and receive children outside district (413)	144
Children employed when (422)	146
Closing of schools, authority (155)	85
Closing school when more than one in district (454)	152
Course of study, payment for (212)	97

SCHOOLS (Continued)	Page
Detaching territory from district (206).....	95
Director making contract with district (456).....	153
Directors not paid for work on school building (442).....	150
District bonds, order of payment (188).....	91
Expulsion and reinstatement (434).....	148
Fares on school busses (267).....	108
Funds tied up in county warrants (177).....	89
Health regulations, exclusion of pupil (237).....	102
High school tuition funds, division of (189).....	92
Injured child, parents choose physician (396).....	139
Invest funds in highway anticipation warrants (360).....	131
Levy to retire registered warrants, when (452).....	152
Liability of directors, child injured in school bus (453).....	152
Organization of new district, who may vote on (462).....	154
Pay fee for boiler inspection (229).....	100
Reopen budget in emergency (164).....	87
Secretary of school board, duties (439).....	149
State Home child now in private home attend school when (232).....	101
Teacher dismissed how (254).....	105
Teacher's pension levy increased over 5% (263).....	107
Teacher seeking office of school director (53).....	58
Transfer funds when (433).....	148
Transfer of surplus funds to retire bonds (136).....	82
Transportation regulation, appeal from (432).....	148✓
Union high school funds used how (451).....	152
Warrants, who must sign (484).....	161
SECURITIES	
(See Fraudulent Practice Act)	
SMALL LOAN ACT	
(See Banks)	
SOCIAL SECURITY	
(See Old Age Pension, Unemployment Compensation, Relief)	
STATE AGRICULTURAL COLLEGE	
(See Agricultural College)	
STATE AUDITOR	
Require counties to set up separate road fund (36).....	54
STATE BOARD OF ABSTRACTERS	
(See Abstracters)	
STATE BOARD OF ACCOUNTING	
(See Accountants)	
STATE BOARD OF ARCHITECT'S EXAMINERS	
(See Architects)	
STATE BOARD OF BARBERS' EXAMINERS	
(See Barbers)	
STATE BOARD OF CHIROPRACTIC EXAMINERS	
(See Chiropractors)	
STATE BOARD OF COSMETOLOGY	
(See Cosmetologists)	
STATE BOARD OF DENTAL EXAMINERS	
(See Dentists)	
STATE BOARD OF EMBALMING EXAMINERS	
(See Embalmers)	

STATE BOARD OF ENGINEERING EXAMINERS (See Engineers)	Page
STATE BOARD OF MEDICAL EXAMINERS (See Medicine)	
STATE BOARD OF PHARMACY (See Pharmacy)	
STATE BOARD OF STOCK INSPECTION COMMISSIONERS (See State Livestock)	
STATE BONDS (See State Funds)	
STATE COAL MINE INSPECTOR (See Coal Mines)	
STATE COMPENSATION INSURANCE FUND Policy cancelled automatically after 20 days (315).....	118
Volunteer firemen not covered (440).....	150
STATE CONTRACTS Use Colorado materials when (393).....	138
STATE DAIRY COMMISSIONER (See Dairies)	
STATE EMPLOYEES RETIREMENT FUND Cannot admit persons who failed to join in time (118).....	78
Citizenship of members (387).....	137
Employee failing to pay assessments in arrears (140).....	83
Predatory animal hunters eligible (345).....	129
Seventy-year mandatory retirement invalid (375).....	134
Teachers in educational institutions (346).....	129
STATE ENGINEER (See Water)	
STATE ENTOMOLOGIST (See Agricultural College)	
STATE EXAMINER Salary of (19).....	48
STATE FAIR (See Fair)	
STATE FUNDS Allowance for administering sales tax can be anticipated (223).....	99
Anticipating income from specific levy (224).....	100
Cannot contribute for federal snow surveys (287).....	112
Certificates of indebtedness for National Guard, when (342).....	128
Dormitory bonds paid by loan from college general fund (227).....	100
Highway Anticipation Warrants, investment, Hail Fund (357).....	131
Highway Anticipation Warrants, investment, school funds (360).....	131
Highway Department, testing laboratory (262).....	107
Invest in treasury bills (342).....	128
No money withdrawn without appropriation (40).....	55
Payment of interest and principal on bonds (224).....	79
Premium on depository bonds (343).....	128
State looks to bond of head of department (486).....	161
Transfer to match Federal funds for building (299).....	115
Transfer of highway fund to special fund (2).....	45
University accept compromise on old county warrants (260).....	106
Used to carry compensation insurance on W. P. A. workers (427).....	147

STATE HAIL INSURANCE (See Hail Insurance)	Page
STATE HIGHWAY DEPARTMENT	
Expenses of Courtesy Patrol paid by (131).....	81
Revision of budget (131).....	81
STATE HOME FOR DEPENDENT CHILDREN	
Entire discretion in board to place or return child (419).....	146
STATE HOME FOR MENTAL DEFECTIVES	
Transfer from maintenance fund to match Federal funds (299).....	115
STATE HOSPITAL (See Colorado State Hospital)	
STATE INSTITUTIONS (See also Public Works)	
Accept title to real estate subject to mortgage (96).....	71
STATE LAND BOARD	
Insurance of improved land held by (62).....	59
Island formed in navigable river belongs to state (348).....	129
STATE OFFICERS (See Officers, Civil Service)	
STATE PENITENTIARY	
Funds for supplies for making highway signs (82).....	63
STATE REFORMATORY (See Reformatory)	
STATE TREASURER	
Issue coal mine licenses (56).....	58
Supplies for alcohol department (364).....	132
Supervision of Excise Tax Commissioner (13) (215).....	47, 98
STATE UNIVERSITY (See University of Colorado)	
STATUTES (See General Assembly, Constitutional Law)	
Amendment must be concurred in by other house (304).....	116
Effective date of act with emergency but not safety clause (108).....	76
In special session (330) (332).....	125, 126
Tax on "civil actions" (68) (121) (138) (153).....	61, 78, 82, 86
Tax on probate proceedings for annotation (101) (122).....	74, 79
STORE LICENSE TAX (See Chain Store Tax)	

T

TAXATION

(See also Chain Store Tax, Sales Tax, Inheritance Tax)

Analysis of act permitting payment without interest (H. B. 200) (94) (252) (256).....	66, 105, 105
Assessment of auto sold prior to April 1, but delivered later (26) (28) 50,	52
Assessment changed by Tax Commission, how (428).....	147
Assessment main track N. W. Terminal Ry. (196).....	93
Assessment of producing mines (178).....	90
Assignment of certificate under new law, how (478).....	156
Assignment of tax certificate, powers of board, Treasurer (51).....	57
Change in county levy, when (278).....	110
Deed not issued when U. S. holds option on certificate (52) (367).....	57, 133
Delinquent taxes on automobile (48).....	56
Delinquent tax list published, form (476).....	156

TAXATION (Continued)

Page

Distraintry of personality after sale of realty for both taxes (6).....	46
Exempt property removed from tax rolls (437).....	149
Exemption lodge building, part rented (391).....	138
Exemption of company when city owns all of the stock (180).....	90
Exemption of fraternal organizations, Denver University (437).....	149
Exemption of property turned over to pension fund (198).....	93
Exemption of reservoir company (226).....	100
Exemption of Rural Rehabilitation Corp. (16).....	48
Exemption, U. S. mortgage and option to purchase (52) (367).....	57, 133
First half paid before last half acceptable (174).....	89
Income tax would be unconstitutional (44).....	55
Irrigation district levy fixed by board (469).....	155
Land omitted, sell for all back taxes next year, (231).....	101
Mill levy limit amendment proposed (435).....	149
Mothers' compensation levy repealed (467).....	154
Of bank stock owned by R. F. C. (207) (251) (351) (350) (323).....	95, 104, 130, 130, 120
Of motor carriers (307).....	116
Of Northern Irrigation Co., owned by Denver (180).....	90
On automobiles before obtaining license (48) (54).....	56, 58
On foreign securities, unconstitutional (302).....	115
Paid in cash only (244).....	103
Pay separately on property separately assessed (308).....	117
Payment general tax without drainage district tax (211).....	96
Perpetual lien on personalty until paid (48).....	56
Priority of liens between State and Federal government (401).....	142
Redemption by mortgagee under HB200 without interest (257).....	106
Redemption of non-contiguous tracts separately (18).....	48
Redemption of part of tract not permitted (463).....	154
Sale by county after deed acquired (377).....	135
Sale for all unpaid taxes as well as current Tax (231).....	101
Sale for delinquent taxes mandatory (221).....	99
Situs of motor carrier (307).....	116
Special assessments, HB200 rebating interest (110).....	76
Tax deed, county cannot take (12).....	47
Transient motor vehicles, not taxable (293) (306).....	113, 116
Undivided interest in property, redemption (247).....	104

TAX COMMISSION

Change assessment, how (428).....	147
-----------------------------------	-----

TOLL ROADS

Built by county with Federal loan (55).....	58
---	----

TOWNS

(See Cities and Towns)

TRADING STAMPS

Decisions on various laws covering (296).....	114
---	-----

TUBERCULOSIS

Director appointed by Welfare Board (479).....	157
--	-----

U

UNEMPLOYMENT COMPENSATION

Employer's summary report approved (480).....	157
---	-----

UNFAIR COMPETITION

Laws suspended by N. R. A. (17).....	48
--------------------------------------	----

UNIVERSITY OF COLORADO

Accept compromise on old county warrants (260).....	106
Right of regents to institute condemnation proceedings (353).....	130

V

VOCATIONAL EDUCATION

Page

Salaries in department (148).....	84
-----------------------------------	----

W

WATER AND IRRIGATION

Act allowing preemption of water invalid (318) (328).....	119, 125
Appropriations, interstate controversies (328).....	125
Conservancy act, constitutional (171).....	88
Effective date of conservancy act (108).....	76
Effect of statutes establishing Districts 42 and 63 (183).....	90
Fee for filing conservation approved certificate (184).....	91
Irrigation district levy fixed by board (469).....	155
Organization of district under conservancy law (98).....	71
State Engineer cannot order company to show books to used (59).....	59

WELFARE

(See Public Welfare)

WESTERN STATE COLLEGE

Dormitory bonds paid by loan from general fund (227).....	100
---	-----

WORKMEN'S COMPENSATION

Covering W. P. A. workers (427).....	147
--------------------------------------	-----

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